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NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Microfilm Publication M892

RECORDS OF THE UNITED STATES

NUERNBERG WAR CRIMES TRIALS

UNITED STATES OF AMERICA v. CARL KRAUCH ET AL. (CASE VI)

AUGUST 14, 1947-JULY 30, 1948

Roll 105

Other Items

Final Pleas
(English)



THE NATIONAL ARCHIVES
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INTRODUCTION

On the 113 rolls of this microfilm publication are reproduced the records of Case VI, *United States of America v. Carl Krauch et al.* (I. G. Farben Case), 1 of the 12 trials of war criminals conducted by the U.S. Government from 1946 to 1949 at Nuernberg subsequent to the International Military Tribunal (IMT) held in the same city. These records consist of German- and English-language versions of official transcripts of court proceedings, prosecution and defense briefs and statements, and defendants' final pleas as well as prosecution and defense exhibits and document books in one language or the other. Also included are minute books, the official court file, order and judgment books, clemency petitions, and finding aids to the documents.

The transcripts of this trial, assembled in 2 sets of 43 bound volumes (1 set in German and 1 in English), are the recorded daily trial proceedings. Prosecution statements and briefs are also in both languages but unbound, as are the final pleas of the defendants delivered by counsel or defendants and submitted by the attorneys to the court. Unbound prosecution exhibits, numbered 1-2270 and 2300-2354, are essentially those documents from various Nuernberg record series, particularly the NI (Nuernberg Industrialist) Series, and other sources offered in evidence by the prosecution in this case. Defense exhibits, also unbound, are predominantly affidavits by various persons. They are arranged by name of defendant and thereunder numerically, along with two groups of exhibits submitted in the general interest of all defendants. Both prosecution and defense document books consist of full or partial translations of exhibits into English. Loosely bound in folders, they provide an indication of the order in which the exhibits were presented before the tribunal.

Minute books, in two bound volumes, summarize the transcripts. The official court file, in nine bound volumes, includes the progress docket, the indictment, and amended indictment and the service thereof; applications for and appointments of defense counsel and defense witnesses and prosecution comments thereto; defendants' application for documents; motions and reports; uniform rules of procedures; and appendixes. The order and judgment books, in two bound volumes, represent the signed orders, judgments, and opinions of the tribunal as well as sentences and commitment papers. Defendants' clemency petitions, in three bound volumes, were directed to the military governor, the Judge Advocate General, and the U.S. District Court for the District of Columbia. The finding aids summarize transcripts, exhibits, and the official court file.

Case VI was heard by U.S. Military Tribunal VI from August 14, 1947, to July 30, 1948. Along with records of other Nuernberg

and Far East war crimes trials, the records of this case are part of the National Archives Collection of World War II War Crimes Records, Record Group 238.

The I. G. Farben Case was 1 of 12 separate proceedings held before several U.S. Military Tribunals at Nuernberg in the U.S. Zone of Occupation in Germany against officials or citizens of the Third Reich, as follows:

<u>Case No.</u>	<u>United States v.</u>	<u>Popular Name</u>	<u>No. of Defendants</u>
1	<i>Karl Brandt et al.</i>	Medical Case	23
2	<i>Erhard Milch</i>	Milch Case (Luftwaffe)	1
3	<i>Josef Altstoetter et al.</i>	Justice Case	16
4	<i>Oswald Pohl et al.</i>	Pohl Case (SS)	18
5	<i>Friedrich Flick et al.</i>	Flick Case (Industrialist)	6
6	<i>Carl Krauch et al.</i>	I. G. Farben Case (Industrialist)	24
7	<i>Wilhelm List et al.</i>	Hostage Case	12
8	<i>Ulrich Greifelt et al.</i>	RuSHA Case (SS)	14
9	<i>Otto Ohlendorf et al.</i>	Einsatzgruppen Case (SS)	24
10	<i>Alfried Krupp et al.</i>	Krupp Case (Industrialist)	12
11	<i>Ernst von Weissacker et al.</i>	Ministries Case	21
12	<i>Wilhelm von Leeb et al.</i>	High Command Case	14

Authority for the proceedings of the IMT against the major Nazi war criminals derived from the Declaration on German Atrocities (Moscow Declaration) released November 1, 1943; Executive Order 9547 of May 2, 1945; the London Agreement of August 8, 1945; the Berlin Protocol of October 6, 1945; and the IMT Charter.

Authority for the 12 subsequent cases stemmed mainly from Control Council Law 10 of December 20, 1945, and was reinforced by Executive Order 9679 of January 16, 1946; U.S. Military Government Ordinances 7 and 11 of October 18, 1946, and February 17, 1947, respectively; and U.S. Forces, European Theater General Order 301 of October 24, 1946. Procedures applied by U.S. Military Tribunals in the subsequent proceedings were patterned after those of the IMT and further developed in the 12 cases, which required over 1,200 days of court sessions and generated more than 330,000 transcript pages.

Formation of the I. G. Farben Combine was a stage in the evolution of the German chemical industry, which for many years led the world in the development, production, and marketing of organic dyestuffs, pharmaceuticals, and synthetic chemicals. To control the excesses of competition, six of the largest chemical firms, including the Badische Anilin & Soda Fabrik, combined to form the Interessengemeinschaft (Combine of Interests, or Trust) of the German Dyestuffs Industry in 1904 and agreed to pool technological and financial resources and markets. The two remaining chemical firms of note entered the combine in 1916. In 1925 the Badische Anilin & Soda Fabrik, largest of the firms and already the majority shareholder in two of the other seven companies, led in reorganizing the industry to meet the changed circumstances of competition in the post-World War markets by changing its name to the I. G. Farbenindustrie Aktiengesellschaft, moving its home office from Ludwigshafen to Frankfurt, and merging with the remaining five firms.

Farben maintained its influence over both the domestic and foreign markets for chemical products. In the first instance the German explosives industry, dependent on Farben for synthetically produced nitrates, soon became subsidiaries of Farben. Of particular interest to the prosecution in this case were the various agreements Farben made with American companies for the exchange of information and patents and the licensing of chemical discoveries for foreign production. Among the trading companies organized to facilitate these agreements was the General Anilin and Film Corp., which specialized in photographic processes. The prosecution charged that Farben used these connections to retard the "Arsenal of Democracy" by passing on information received to the German Government and providing nothing in return, contrary to the spirit and letter of the agreements.

Farben was governed by an Aufsichtsrat (Supervisory Board of Directors) and a Vorstand (Managing Board of Directors). The Aufsichtsrat, responsible for the general direction of the firm, was chaired by defendant Krauch from 1940. The Vorstand actually controlled the day-to-day business and operations of Farben. Defendant Schmitz became chairman of the Vorstand in 1935, and 18 of the other 22 original defendants were members of the Vorstand and its component committees.

Transcripts of the I. G. Farben Case include the indictment of the following 24 persons:

Otto Ambros: Member of the Vorstand of Farben; Chief of Chemical Warfare Committee of the Ministry of Armaments and War Production; production chief for Buna and poison gas; manager of Auschwitz, Schkopau, Ludwigshafen, Oppau, Gendorf, Dyhernfurth, and Falkenhagen plants; and Wehrwirtschaftsfuehrer.

Max Brueggemann: Member and Secretary of the Vorstand of Farben; member of the legal committee; Deputy Plant Leader of the Leverkusen Plant; Deputy Chief of the Sales Combine for Pharmaceuticals; and director of the legal, patent, and personnel departments of the Works Combine, Lower Rhine.

Ernst Buerger: Member of the Vorstand of Farben; Chief of Works Combine, Central Germany; Plant Leader at the Bitterfeld and Wolfen-Farben plants; and production chief for light metals, dyestuffs, organic intermediates, plastics, and nitrogen at these plants.

Heinrich Buetefisch: Member of the Vorstand of Farben; manager of Leuna plants; production chief for gasoline, methanol, and chlorine electrolysis production at Auschwitz and Moosbierbaum; Wehrwirtschaftsfuehrer; member of the Himmler Freundeskreis (circle of friends of Himmler); and SS Obersturmbannfuehrer (Lieutenant Colonel).

Walter Duerrfeld: Director and construction manager of the Auschwitz plant of Farben, director and construction manager of the Monowitz Concentration Camp, and Chief Engineer at the Leuna plant.

Fritz Gajewski: Member of the Central Committee of the Vorstand of Farben, Chief of Sparte III (Division III) in charge of production of photographic materials and artificial fibers, manager of "Agfa" plants, and Wehrwirtschaftsfuehrer.

Heinrich Gattineau: Chief of the Political-Economic Policy Department, "WIPO," of Farben's Berlin N.W. 7 office; member of Southeast Europe Committee; and director of A.G. Dynamit Nobel, Pressburg, Czechoslovakia.

Paul Haeffliger: Member of the Vorstand of Farben; member of the Commercial Committee; and Chief, Metals Departments, Sales Combine for Chemicals.

Erich von der Heyde: Member of the Political-Economic Policy Department of Farben's Berlin N.W. 7 office, Deputy to the Chief of Intelligence Agents, SS Hauptsturmfuehrer, and member of the WI-RUE-AMT (Military Economics and Armaments Office) of the Oberkommando der Wehrmacht (OKW) (High Command of the Armed Forces).

Heinrich Hoerlein: Member of the Central Committee of the Vorstand of Farben; chief of chemical research and development of vaccines, sera, pharmaceuticals, and poison gas; and manager of the Elberfeld Plant.

Max Ilgner: Member of the Vorstand of Farben; Chief of Farben's Berlin N.W. 7 office directing intelligence, espionage, and propaganda activities; member of the Commercial Committee; and Wehrwirtschaftsfuehrer.

Friedrich Jaehne: Member of the Vorstand of Farben; chief engineer in charge of construction and physical plant development; Chairman of the Engineering Committee; and Deputy Chief, Works Combine, Main Valley.

August von Knieriem: Member of the Central Committee of the Vorstand of Farben; Chief Counsel of Farben; and Chairman, Legal and Patent Committees.

Carl Krauch: Chairman of the Aufsichtsrat of Farben and Generalbevollmaechtigter fuer Sonderfragen der Chemischen Erzeugung (General Plenipotentiary for Special Questions of Chemical Production) on Goering's staff in the Office of the 4-Year Plan.

Hans Kuehne: Member of the Vorstand of Farben; Chief of the Works Combine, Lower Rhine; Plant Leader at Leverkusen, Elberfeld, Uerdingen, and Dormagen plants; production chief for inorganics, organic intermediates, dyestuffs, and pharmaceuticals at these plants; and Chief of the Inorganics Committee.

Hans Kugler: Member of the Commercial Committee of Farben; Chief of the Sales Department Dyestuffs for Hungary, Rumania, Yugoslavia, Greece, Bulgaria, Turkey, Czechoslovakia, and Austria; and Public Commissar for the Falkenau and Aussig plants in Czechoslovakia.

Carl Lautenschlaeger: Member of the Vorstand of Farben; Chief of Works Combine, Main Valley; Plant Leader at the Hoechst, Griesheim, Mainkur, Gersthofen, Offenbach, Eystrup, Marburg, and Neuhausen plants; and production chief for nitrogen, inorganics, organic intermediates, solvents and plastics, dyestuffs, and pharmaceuticals at these plants.

Wilhelm Mann: Member of the Vorstand of Farben, member of the Commercial Committee, Chief of the Sales Combine for Pharmaceuticals, and member of the SA.

Fritz ter Meer: Member of the Central Committee of the Vorstand of Farben; Chief of the Technical Committee of the Vorstand that planned and directed all of Farben's production; Chief of Sparte II in charge of production of Buna, poison gas, dyestuffs, chemicals, metals, and pharmaceuticals; and Wehrwirtschaftsfuehrer.

Heinrich Oster: Member of the Vorstand of Farben, member of the Commercial Committee, and manager of the Nitrogen Syndicate.

Hermann Schmitz: Chairman of the Vorstand of Farben, member of the Reichstag, and Director of the Bank of International Settlements.

Christian Schneider: Member of the Central Committee of the Vorstand of Farben; Chief of Sparte I in charge of production of nitrogen, gasoline, diesel and lubricating oils, methanol, and organic chemicals; Chief of Central Personnel Department, directing the treatment of labor at Farben plants; Wehrwirtschaftsfuehrer; Hauptabwehrbeauftragter (Chief of Intelligence Agents); Hauptbetriebsfuehrer (Chief of Plant Leaders); and supporting member of the Schutzstaffeln (SS) of the NSDAP.

Georg von Schnitzler: Member of the Central Committee of the Vorstand of Farben, Chief of the Commercial Committee of the Vorstand that planned and directed Farben's domestic and foreign sales and commercial activities, Wehrwirtschaftsfuehrer (Military Economy Leader), and Hauptsturm-fuehrer (Captain) in the Sturmabteilungen (SA) of the Nazi Party (NSDAP).

Carl Wurster: Member of the Vorstand of Farben; Chief of the Works Combine, Upper Rhine; Plant Leader at Ludwigshafen and Oppau plants; production chief for inorganic chemicals; and Wehrwirtschaftsfuehrer.

The prosecution charged these 24 individual staff members of the firm with various crimes, including the planning of aggressive war through an alliance with the Nazi Party and synchronization of Farben's activities with the military planning of the German High Command by participation in the preparation of the 4-Year Plan, directing German economic mobilization for war, and aiding in equipping the Nazi military machines.¹ The defendants also were charged with carrying out espionage and intelligence activities in foreign countries and profiting from these activities. They participated in plunder and spoliation of Austria, Czechoslovakia, Poland, Norway, France, and the Soviet Union as part of a systematic economic exploitation of these countries. The prosecution also charged mass murder and the enslavement of many thousands of persons particularly in Farben plants at the Auschwitz and Monowitz concentration camps and the use of poison gas manufactured by the firm in the extermination

¹ The trial of defendant Brueggemann was discontinued early during the proceedings because he was unable to stand trial on account of ill health.

of millions of men, women, and children. Medical experiments were conducted by Farben on enslaved persons without their consent to test the effects of deadly gases, vaccines, and related products. The defendants were charged, furthermore, with a common plan and conspiracy to commit crimes against the peace, war crimes, and crimes against humanity. Three defendants were accused of membership in a criminal organization, the SS. All of these charges were set forth in an indictment consisting of five counts.

The defense objected to the charges by claiming that regulations were so stringent and far reaching in Nazi Germany that private individuals had to cooperate or face punishment, including death. The defense claimed further that many of the individual documents produced by the prosecution were originally intended as "window dressing" or "howling with the wolves" in order to avoid such punishment.

The tribunal agreed with the defense in its judgment that none of the defendants were guilty of Count I, planning, preparation, initiation, and waging wars of aggression; or Count V, common plans and conspiracy to commit crimes against the peace and humanity and war crimes.

The tribunal also dismissed particulars of Count II concerning plunder and exploitation against Austria and Czechoslovakia. Eight defendants (Schmitz, von Schnitzler, ter Meer, Buergin, Haeffliger, Ilgner, Oster, and Kugler) were found guilty on the remainder of Count II, while 15 were acquitted. On Count III (slavery and mass murder), Ambros, Bueteffisch, Duerrfeld, Krauch, and ter Meer were judged guilty. Schneider, Bueteffisch, and von der Heyde also were charged with Count IV, membership in a criminal organization, but were acquitted.

The tribunal acquitted Gajewski, Gattineau, von der Heyde, Hoerlein, von Knieriem, Kuehne, Lautenschlaeger, Mann, Schneider, and Wurster. The remaining 13 defendants were given prison terms as follows:

<u>Name</u>	<u>Length of Prison Term (years)</u>
Ambros	8
Buergin	2
Bueteffisch	6
Duerrfeld	8
Haeffliger	2
Ilgner	3
Jaehne	1 1/2
Krauch	6
Kugler	1 1/2
Oster	2
Schmitz	4
von Schnitzler	5
ter Meer	7

All defendants were credited with time already spent in custody.

In addition to the indictments, judgments, and sentences, the transcripts also contain the arraignment and plea of each defendant (all pleaded not guilty) and opening statements of both defense and prosecution.

The English-language transcript volumes are arranged numerically, 1-43, and the pagination is continuous, 1-15834 (page 4710 is followed by pages 4710(1)-4710(285)). The German-language transcript volumes are numbered 1a-43a and paginated 1-16224 (14a and 15a are in one volume). The letters at the top of each page indicate morning, afternoon, or evening sessions. The letter "C" designates commission hearings (to save court time and to avoid assembling hundreds of witnesses at Nuernberg, in most of the cases one or more commissions took testimony and received documentary evidence for consideration by the tribunals). Two commission hearings are included in the transcripts: that for February 7, 1948, is on pages 6957-6979 of volume 20 in the English-language transcript, while that for May 7, 1948, is on pages 14775a-14776 of volume 40a in the German-language transcript. In addition, the prosecution made one motion of its own and, with the defense, six joint motions to correct the English-language transcripts. Lists of the types of errors, their location, and the prescribed corrections are in several volumes of the transcripts as follows:

- First Motion of the Prosecution, volume 1
- First Joint Motion, volume 3
- Second Joint Motion, volume 14
- Third Joint Motion, volume 24
- Fourth Joint Motion, volume 29
- Fifth Joint Motion, volume 34
- Sixth Joint Motion, volume 40

The prosecution offered 2,325 prosecution exhibits numbered 1-2270 and 2300-2354. Missing numbers were not assigned due to the difficulties of introducing exhibits before the commission and the tribunal simultaneously. Exhibits 1835-1838 were loaned to an agency of the Department of Justice for use in a separate matter, and apparently No. 1835 was never returned. Exhibits drew on a variety of sources, such as reports and directives as well as affidavits and interrogations of various individuals. Maps and photographs depicting events and places mentioned in the exhibits are among the prosecution resources, as are publications, correspondence, and many other types of records.

The first item in the arrangement of prosecution exhibits is usually a certificate giving the document number, a short description of the exhibits, and a statement on the location of the original document or copy of the exhibit. The certificate is followed by the actual prosecution exhibit (most are photostats,

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but a few are mimeographed articles with an occasional carbon of the original). The few original documents are often affidavits of witnesses or defendants, but also ledgers and correspondence, such as:

<u>Exhibit No.</u>	<u>Doc. No.</u>	<u>Exhibit No.</u>	<u>Doc. No.</u>
322	NI 5140	1558	NI 11411
918	NI 6647	1691	NI 12511
1294	NI 14434	1833	NI 12789
1422	NI 11086	1886	NI 14228
1480	NI 11092	2313	NI 13566
1811	NI 11144		

In rare cases an exhibit is followed by a translation; in others there is no certificate. Several of the exhibits are of poor legibility and a few pages are illegible.

Other than affidavits, the defense exhibits consist of newspaper clippings, reports, personnel records, Reichgesetzblatt excerpts, photographs, and other items. The 4,257 exhibits for the 23 defendants are arranged by name of defendant and thereunder by exhibit number. Individual exhibits are preceded by a certificate wherever available. Two sets of exhibits for all the defendants are included.

Translations in each of the prosecution document books are preceded by an index listing document numbers, biased descriptions, and page numbers of each translation. These indexes often indicate the order in which the prosecution exhibits were presented in court. Defense document books are similarly arranged. Each book is preceded by an index giving document number, description, and page number for every exhibit. Corresponding exhibit numbers generally are not provided. There are several unindexed supplements to numbered document books. Defense statements, briefs, pleas, and prosecution briefs are arranged alphabetically by defendant's surname. Pagination is consecutive, yet there are many pages where an "a" or "b" is added to the numeral.

At the beginning of roll 1 key documents are filmed from which Tribunal VI derived its jurisdiction: the Moscow Declaration, U.S. Executive Orders 9547 and 9679, the London Agreement, the Berlin Protocol, the IMT Charter, Control Council Law 10, U.S. Military Government Ordinances 7 and 11, and U.S. Forces, European Theater General Order 301. Following these documents of authorization is a list of the names and functions of members of the tribunal and counsels. These are followed by the transcript covers giving such information as name and number of case, volume numbers, language, page numbers, and inclusive dates. They are followed by the minute book, consisting of summaries of the daily proceedings, thus providing an additional finding aid for the transcripts. Exhibits are listed in an index that notes the

type, number, and name of exhibit; corresponding document book, number, and page; a short description of the exhibit; and the date when it was offered in court. The official court file is summarized by the progress docket, which is preceded by a list of witnesses.

Not filmed were records duplicated elsewhere in this microfilm publication, such as prosecution and defense document books in the German language that are largely duplications of the English-language document books.

The records of the I. G. Farben Case are closely related to other microfilmed records in Record Group 238, specifically prosecution exhibits submitted to the IMT, T988; NI (Nuernberg Industrialist) Series, T301; NM (Nuernberg Miscellaneous) Series, M-936; NOKW (Nuernberg Armed Forces High Command) Series, T1119; NG (Nuernberg Government) Series, T1139; NP (Nuernberg Propaganda) Series, M942; WA (undetermined) Series, M946; and records of the Brandt case, M887; the Milch Case, M888; the Altstoetter case, M889; the Pohl Case, M890; the Flick Case, M891; the List case, M893; the Greifelt case, M894; and the Ohlendorf case, M895. In addition, the record of the IMT at Nuernberg has been published in the 42-volume *Trial of the Major War Criminals Before the International Military Tribunal* (Nuernberg, 1947). Excerpts from the subsequent proceedings have been published in 15 volumes as *Trials of War Criminals Before the Nuernberg Military Tribunal Under Control Council Law No. 10* (Washington). The Audiovisual Archives Division of the National Archives and Records Service has custody of motion pictures and photographs of all 13 trials and sound recordings of the IMT proceedings.

Martin K. Williams arranged the records and, in collaboration with John Mendelsohn, wrote this introduction.

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Roll 105

Target 1

Final Plea, Fundamental Legal Issues

(English)

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Figure 1.2 on The Fulfillment of Questions
of Law (Civ. 1.2)

Case 6
Defense

CASE VI

(versus French et al.,)

Final - Plea
Brief

on

• FUNDAMENTAL QUESTIONS OF LAW •

by

Professor Dr. Eduard W A H L

Special Counsel for all Defendants

Strong



May it please the Tribunal,

In a critical survey of the big Nuremberg Trial, Georg A. Finch, the Chief Editor of the "American Journal of International Law" pointed out, in one of the last issues, that the Russian Professor Trainin, a member of the Law Institute of the Moscow Academy of Science, had had an extraordinarily effective influence on the contents of the London Statute, which he had signed as the representative of the Soviet Union. Originally, the Allies had not intended to include crimes against peace in the indictment, and those crimes did not play any part in the warnings which the Allies addressed to the German Government before the cessation of hostilities. In London, however, Trainin's book, "The Responsibility of Hitlerism from the Standpoint of Criminal Law" was influential. In this book, Professor Trainin states: "In meting out punishment to the Axis war criminals, Russia would not permit herself to be restricted by traditional legalism." The little success attained by previous attempts to create an international penal code can be explained by the fact that the purpose pursued by the capitalist countries was in reality not to scabot international crimes, but to create a united criminal front against the Soviet Union. "This," he continues, "is, by no means, accidental. Its roots can be traced to the

general character of international legal relations during the era of Imperialism". These statements strongly influenced Jackson, who, as Pinch ascertained, uses almost the identical words in his report of 7 July 1945, which preceded the signing of the London Statute: "We must not permit the state of law to become complicated or obscured by legal ~~forms~~^{issues} developed in the era of Imperialism for the purpose of making war respectable."

In particular, Trainin proposes to attribute personal guilt for crimes against peace not only to the members of armies and governments, but also to propagandists, capitalists and industrialists. A significant light is thrown in this connection on the provisions of Central Council Law No. 10, Article II, Number 2f, concerning the criminal responsibility of the economic leaders (Wirtschaftsfuehrer) which, according to the text, is sufficient in itself to justify conviction, but which the Prosecution understands to be merely a supposition of guilt (Schuldvermutung).

Thus it is this trial in particular which is overshadowed by the Russian ideology and by the fight against the old and revered legal traditions of the civilized world, which is stigmatized as an outcome of the capitalist and imperialist ideology. However, worthy of respect may be Jackson's idealism,

this is, nevertheless, his private opinion and not that of American Jurisprudence or that of his colleagues in the Supreme Court of the United States. The more I searched the rich American legal literature, the more was this impression strengthened by my studies. Strong legal ethics were perceptible those which refute the Soviet insinuations and I cannot refrain from quoting the words of Murphy in the Yamashita case, though they were expressed in a dissenting opinion, because they disclose with deep feeling the crisis which justice is undergoing in such trials and, at the same time, emphasize the high and indestructible dignity of old legal traditions. Murphy states: "The inalienable rights of the individual, including those guaranteed by the "due process" clause of the Fifth Amendment, do not apply only to the nations which have excelled in the battle field or to those which have dedicated themselves to the democratic ideology. They apply to all people in the world, whether victorious or defeated, whatever their race, color or creed. They rise above any methods of warfare and above any prescription. They survive all temporary popular passion and fury. Neither a court, nor the legislative or executive powers, not even the mightiest army in the world, can ever abolish them. Such is the universal and indestructible nature of the basic rights"

He also states: "The necessity of punishing war criminals does not justify the abandonment of our respect for justice....., to draw any other conclusion would mean that the enemy may have lost the battle, but succeeded in destroying our ideals".

This Tribunal, too, is on the side of the law. For the first time in the course of the Nuremberg trials, it has appointed a Special Counsel of all Defendants for fundamental questions of law, which it obviously does not regard ^{as} ~~legal issues~~ ^{issues} having the only purpose to complicate and obscure the trial. At this point, I wish to avail myself of the opportunity to express my sincere thanks to the Tribunal. It is this very attitude which encourages me to express my doubts from a legal point of view without any hesitation, restricting myself, of course, to the most substantial points, after having had the opportunity in my closing brief to discuss in detail the entire complex of questions.

Shortage of time will not permit me to discuss all questions of legal procedure and I shall omit detailed evidence that this High Tribunal is an American Military Commission operating under an order of the Control Council.

Reverting to the main objection of the retroactive penal law, I shall begin with the question as to whether this High Tribunal

is authorized and obligated to take into consideration the extraordinarily grave doubts which were raised against the opinion contained in the IMT judgment by the international critics, especially in America.

Final Plea Wehl

To anticipate the outcome, the Defense takes the standpoint that American courts are bound, on legal grounds alone, to acquit the defendants in the industrial trials at least, since the London Agreement is the sole basis for the IMT judgment and this must be described as a Bill of Attainder, i.e. as subsequent legislation for the punishment of past actions, and as an ex post facto law as understood in American Law, and consequently does not empower an American court to impose a penalty. These conceptions of American Constitutional Law played no part in the IMT judgment because of the international nature of the Tribunal, so that to this extent, in view of the different nature of the problem, no precedent exists. If the intention of Article 10 of Ordinance No. 7 was to prohibit the American Military Tribunal from examining the IMT judgment from the view-point of the preservation of constitutional rights, this regulation would itself be invalid because it would violate the American Constitution.

But even if the court in question is an international one, the objection retains its force, for it must not be overlooked that in accordance with the principles inherent in the obligation to observe precedent, the obligation always ceases if the material conditions which were to be dealt with in the precedent differed essentially from the facts now under consideration.

This is the case here. If, in the IMT, leaders of the State or other political figures in leading positions were concerned, this time it is a question of the punishment of private persons. This distinction is not of minor importance, especially in connection with the prohibition against retroactive criminal laws. JACKSON himself defended in principle the validity of the precept "nulla poena sine lege", but added:

many

"But these men cannot claim that such a principle, which in legal systems forbids laws with retroactive effect, must also apply in their case. They cannot prove that they have ever in any situation based their actions on international law or concerned themselves with it to the slightest degree." (Page 57).

The French Prosecutor Francois de MESTRON in his speech for the Prosecution on 17 January 1946 stated in similar vein that the juridical doctrine of National-Socialism admitted that in domestic criminal law even the judge can and must supplement the law. The written law no longer constituted the Magna Carta of the delinquent. The judge could punish when, in the absence of a provision for punishment, the National Socialist sense of justice was gravely offended.

After a lengthy quotation from a speech by the then Juristenführer FRANK at the German

Final Plea Wahl

lawyers' diet of 1936, he continues:

"It would suit the defendant FRANK and his accomplices very ill to find fault with the lack of special written penal provisions."

(Page 7).

KELSEN makes use of the same argument when he writes:

"..... the infliction of an evil, if not carried out .. as a reaction against a wrong, is a wrong itself. The non-application of the rule against ex post facto laws is a just sanction inflicted upon those who have violated this rule and hence have forfeited the privilege to be protected by it." (from "The rule against ex post facto laws and the prosecution of the Axis war criminals", in "The Judge Advocate Journal", Vol. II, p. 46 - Case Winter 1945)

This shows that the punishment of the accused Nazi leaders was guided by the idea of retaliation rejecting the objection *nulla poena sine lege*, an idea of retaliation which must cease to apply in the case of the accused businessmen and industrialists. In view of the wide range of legal precepts found in precedents it is essential to work out the necessary distinctions, and these distinctions must here lead to the inapplicability of the precedent, since the defendants in this trial cannot, like the defendants in the first trial, be charged with violation of the precept *nulla poena sine lege*.

Even during the preliminary work in the American government offices, which preceded the London decisions, view-points arose which pointed in the same direction.

1)
Murray C. Bernays¹⁾, who as Colonel and Chief of the Special Projects Branch of GI General Staff took part in the authoritative decisions of the War and State Department on the prosecution of the main war criminals, writes:

"All doubts and problems which arose in open discussion on criminal prosecution and many more over and above these, ^{were} investigated thoroughly in the War Ministry and the Ministry for Foreign Affairs and other offices in Washington, before the plan was finally approved. As Chief of the Special Projects Branch of the General Staff, the writer can attest to this from personal knowledge both of the original introduction of the plan and of its personal step by step. There were those who advocated the punishment of the Nazi leaders simply by a decree from the Allied governments. They questioned the necessity and also the wisdom of legal proceedings. Others rejected the fundamental conception of the plan, including the precept that war of aggression is a crime. It is a tribute to the vitality of democratic traditions that before unanimity could be reached on the course to be taken, the American government had to be satisfied that we should truly be doing justice, even in the case of such a brutal enemy and even in the face of provocation the obscene cruelty of which has seldom found its equal."

Bernays also deals expressis verbis with the objection of ex post facto law and has no more to say on the subject

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"Survey Graphic", January 1946, Page 7 ff.

than that Hitler wanted inter alia to attack the United States as well, and brings as proof an otherwise disputed document to show that Hitler, in a speech to his "fellow conspirators" in 1939, declared:

" I am afraid of only one thing, and that is that Chamberlain or some other filthy swine will turn up with a proposal for a change of mind. He will be thrown out, even if I myself have to stamp on his belly in front of all the photographers. The invasion and elimination of Poland begins on Saturday....."

In the same document it is stated that the speech was received with enthusiasm and that Goering jumped up on the table and danced. In view of the depravity of the German Fuehrer clique, Bernays wants to convince his readers of the senselessness of any legal objection to their being punished.

Even if one could adopt this standpoint, the question remains: What have those businessmen and industrialists, none of whom took part in the Fuehrer's conferences which are so critical according to the IMT judgment, to do with the policy of the highest Nazi government clique? They have a right to be judged by the law as it stands.

To refer now to Count I on preparation for a war of aggression; the Defense does not wish to be misunderstood; there can be no doubt that everything must be done to prevent a war of aggression in the future.

The most important task would be to create an international organization which, by virtue of its authority, would be in the position to force a decision in all international dissensions by purely peaceful means. In such an organization, new penal standards would have a major role to play. Humanity has suffered too severely as a result of the war not to long to the very core of its being for lasting peace. It must be stated, however, that at the outbreak of the second World War, a legal state such as this, in which the sovereignty of the various governments would be restricted by the existence of penal regulations governing a war of aggression, had not yet been achieved.

In the first place, the attitude adopted by the Court to the sentence "nulla poena sine lege" is not quite clear. It is first stated that this principle is a primary requisite of justice, in the same breath, we are told, however, that it in no way restricts the sovereignty of the individual States; but then again, so much at least of the principle is retained that, we are told, at the time when the action was undertaken, a crime, in the legal sense, must already have been committed, and all efforts are directed to the establishment of the fact that the criminal nature of the action had been a well-known fact for decades past.

This attitude is in itself only a half-truth. Are there crimes for which no punishment is prescribed? The IMT Judgment replies:

It was precisely in international law that there had always been legal imperfections which, without involving express threat of punishment, had formed the basis for criminal proceedings, a fact of which the punishment of violations of the Haag Land Warfare Convention was constantly furnishing proof. This comparison is invalid, however, for infringements of Military Law have always been punished by the law of common usage. They therefore rank as crimes even in the case of a country which is not a signatory of the Haag Land Warfare Convention. In this case, we are concerned purely with the law of common usage, among the hypotheses for which figure the proof of precedent and the *opinio necessitatis*. One can see that there is no crime without punishment and that in itself suggests the conclusion that the out-lawry of war by the Kellogg-Pact does not stigmatize war as a crime in the legal sense, as there is no mention of the punishment of the governments concerned, the only sanction provided for being the loss of rights under the Kellogg-Pact on the part of the government violating the terms of the agreement.

In connection with the case of the German Kaiser to which the IMT Judgment refers, KELSEY, Professor of the University of California, rightly draws attention in his paper, "Will the Judgment in the Nuremberg Trial Constitute a Precedent in International Law?" (published in the *International Law Quarterly*, Vol. I, No. 2, Summer 1947)

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to the fact that, apart from Article 227 of the Treaty of Versailles, there was no legal principle to be cited in proof of the fact that the German monarch was liable to punishment:

"When the victors in the first World War intended to bring William II to trial - not for a crime against ^{the} peace - but "for a supreme offense against the international morality and the sanctity of treaties", they thought it necessary to insert the provisions establishing, with retroactive force, his capacity as organ of the German Reich into the peace treaty signed and ratified by this State."

For this reason, the ULA established in the Committee formed in 1919, the impossibility of proving a legal basis for the charge against the German Kaiser (c.f. J.Brown Scott; House Seymour, "What really happened at Paris", London 1921, Pages 237, 239).

Accordingly, in its note dated 21 January 1920, refusing the Allies' demand that the Kaiser be handed over to them, the Netherlands' Government stated that it could not recognise any legal obligation to associate itself with an act of international policy on the part of the Powers:

"If, in the future, we should succeed through the League of Nations, in creating an international legal system having the authority to judge acts which have been classed as crimes by statutes drawn up at an earlier date, and which, as such, are sanctioned, then the Netherlands will associate itself with the new order of things."

That is, the Netherlands Government saw in Article 227 of the Treaty of Versailles : retro-active penal law which was therefore not a legally defensible basis for the Allies' demand that the Kaiser be delivered up to them.

The governing factor in international law - linked, for the rest, with the observance of the sovereignty of the individual governments - was in fact the provision in accordance with which the conduct of a war does not, in the eyes of the law, ^{/constitute/} a crime on the ^{part of/} the members of the Government. ELSA (op.cit.) draws attention to the fact that the term "criminal" as applied to war in international law as it stood at that time did not in any way imply that the governments conducting the war were liable to punishment.

"An illegal war may be called an "international crime" and has been so called in the Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, and in a Resolution of the Eight Assembly of the League of Nations (but not in the Briand-Kellogg-Pact). This term, however, does not mean - as the International Military Tribunal erroneously declares in its Judgment - "that those who plan and wage such a war with its inevitable and terrible consequences, are committing a crime in so doing."

In this connection, the Committee Report of the Polish Delegate SOKAL on the Geneva Resolution of 1927 is particularly informative. As is well known, this Resolution was not ratified; it has, however, been introduced into the IMT Judgment as proof

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of the legal validity of the argument that wars of aggression are criminal. In this Resolution, war is described as criminal. SOEAL states:

"While agreeing that a resolution does not constitute a legal instrument as such, materially augmenting security and sufficient unto itself, the Third Committee is unanimous in its intention to appreciate its high moral and educative value."

Moreover, on page 391 of "Justice in Nuremberg", Foreign Affairs, April 1946, Professor Max RADIN of the University of California writes:

"The word 'international crime' used about an aggressive war in the Geneva Protocol of 1924 cannot be rated higher now than it was rated then, as a rhetorical term - a noble rhetoric, to be sure - but not a term with definite legal content."

If, in fact, the application to war of the epithet "criminal" has merely a moral and educative value, the milder term "Outlawry" used in the Kellogg-Pact cannot be used as the basis for establishing the liability to punishment of the Governments involved. It was the intention of the fathers of the Kellogg-Pact to impose certain moral sanctions on the aggressor, to expose him to the moral judgment of public opinion throughout the world. In "Nuremberg als Rechtsfrage", (Nuremberg as a Legal Problem) Klett-Verlag Stuttgart (Page 42), my colleague Wilhelm GREWE, Professor of National and International Law at the University of Freiburg, writes;

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" It is dangerous and indefensible - if the agreement is to be interpreted in its true sense - to attempt, as was done in the thirties and in the course of the recent war, to justify by means of the Kellogg-Pact, a partial suspension of Military Law and of the Laws of Neutrality in so far as the State violating the agreement was concerned. The /attempt, however, on the part of/ /Sir Hartley Shawcross, and with him his colleagues and the Tribunal, to do so in addition from the text and system of the Kellogg-Pact direct criminal liability under the terms of international law (if I may be allowed to use such an expression), of the individual persons responsible for the violation of the pact, appears to be totally and completely lacking in legal justification."

The following are the factors opposing such an attempt:

None of the Governments signing the Kellogg-Pact in 1928 in fact so much as thought of the criminal liability in the eyes of the law of individual persons. So much can be clearly seen from a statement made by Secretary of State, Kellogg before the Foreign Affairs Committee of the Senate of the U.S.A. on 7 December 1928:

" How we can assume that the United States was under a moral obligation to go to Europe in order to punish the aggressor or belligerent party, when no such proposal was made throughout the negotiations, when no one agreed to such a settlement and when, in fact, no such obligation exists -

is beyond my comprehension. I cannot understand it. As I see the matter, we are under no more binding obligation to punish someone for violating a pact of non aggression than we are to punish him for the violation of any other agreement concluded with us."

1)
Wilhelm Grewe¹⁾ rightly comments:

"Does that mean that one presupposes the right to punish a person? On the contrary! It is obvious merely from the examination of the logical processes of the law that this would in itself imply the denial of the power to inflict punishment: For when has there ever been a case in which the violation of an agreement by one party has bestowed upon the other the power to inflict punishment under international law? ~~Withdrawal of the offending power~~ ^{cancellation of the treaty}, reparations, if need be reprisals - these are the provisions made by the law to deal with cases of breach of agreement - but of the "punishment" of the State violating the agreement or of the individual persons responsible for the violation thereof, there has never been any question. International law cannot be thus changed in its fundamentals from one day to the next while the world stands by and watches in silence."

The Foreign Affairs Committee of the Senate of the U.S.A. submitted the following report to the plenary session of the Senate on 15 January 1929:

"The Committee is of the opinion that neither the spirit nor the letter of the agreement provide for sanctions."

1) op.cit. pp. 105 ff.

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Should any signatory of the agreement or any State later associating itself with the agreement violate any of the provisions thereof, there is nothing either in the letter or in the spirit of the agreement to indicate obligation or liability on the part of the other signatories to impose a punishment or resort to force against the State violating the agreement. The effect of the violation of the agreement by one of the signatories is to release the other signatories from all obligations undertaken in that agreement towards the State violating the agreement."

On 8 August 1932, Secretary of State STIMSON said before the Council on Foreign Relations in New York:

"The Briand-Kellogg-Pact does not provide for any compulsory sanctions. It does not demand of any signatory that it should use force in the event of violation of the agreement. It rather attaches supreme importance to the sanction of public opinion, which can be made into one of the most powerful sanctions in the world."

Moral sanctions against the State violating the agreement, but not the liability to punishment of the individual persons responsible for the violation thereof were thus understood by the signatories of the Kellogg-Pact to be the consequences of violation of the agreement.

The same conclusion can be drawn from the conduct of the Powers in earlier cases of violation of the Kellogg-Pact. RADIN, Professor of the University of

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California, writes in "Foreign Affairs" (April 1946, Page 381):

"If the violation of the Kellogg-Briand-Pact or of the Geneva Protocol constitutes a crime, either for the nation or for the persons instigating it, then the conduct at the time of all the Powers that joined in creating the Tribunal at Nuremberg puts them in the unfortunate light of having acquiesced in what they now denounce as criminal. No official protest was made by those Powers, when acts violating the Pact were committed. The personal indignation of such high-minded men as Mr. Stimson, Secretary of State, when Japan invaded Manchuria, was shared, so far as our records go, neither by the President nor the Congress. And if it was shared by the majority of the people, there is abundant reason to hold that at that time, no substantial number of Americans would have approved of war on Japan because of it. Did the United States, did Great Britain, France and Russia become accessories after the fact in these crimes when they declined to treat them as crimes and continued close relations both with the nations that had committed them and the persons who had instigated them? It is hard to understand why that conclusion does not follow."

Finch makes a similar statement in his periodical "The American Journal of International Law", 1947, Page 26, in an article on "The Nuremberg Trial and Inter-

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national Law:

"Moreover, the Tribunal failed to take into consideration or give due weight to the attitudes of the prosecution documents toward the same events at the time they took place. For example, the prompt recognition of the annexation of Austria by Germany, and the failure of the League of Nations to act upon a protest filed by the Mexican Government demanding that the obligations of the Covenant be enforced at that time, would seem to negative the holding by the Nuremberg Tribunal that the planning and consummation of the annexation was part of an international crime."

The examples in connection with this point are multiple: The following should be mentioned: The Czech war in 1934, the conquest of Abyssinia by Italy in 1935-36, the China-Japan conflict in 1937 and finally the Russo-Finnish war in 1939/40. In his lengthy plaidoyer before the IMT, my colleague Jaurres of the University of Cologne rightly stressed the point that the entire system of collective security had broken down completely at the outbreak of the second World War, that in none of these cases was there any mention of any liability of the governments of the aggressor States to punishment, that diplomatic negotiations were even taken up shortly afterwards, leading, in many cases, to the recognition of the annexations.

When all is said and done, we must concur with Professor Radin's on the argument of *ex post facto* law opinion, as expressed in the book cited above:

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^{not} "I do think that in the many discussions of the matter by Mr. Jackson and others the challenge has been met." (page 25), and Professor Kelsen is right when he recognizes the London Agreement, that is, "special international law", as the sole basis of the IMT Judgment and refuses to accord the IMT Judgment the significance of a genuine precedent in the sense of general international law. The Chief Editor of the "American Journal of International Law", Mr. Finch, comes to the same conclusion in his treatise mentioned at the beginning.

Finally, there is the anxious warning of the Harvard Professor Manley C. Hudson to guard the integrity of international treaty instruments against the falsification of their meaning. Under the heading of, "Integrity of International Instruments", in " The Annals of International Law", January 1948 (Vol. 42, Book 1, p.105), he writes:

" It is difficult to conceive of the possibility of making substantial progress in the development of international law unless a scrupulous respect obtains for the integrity of international instruments. Yet a tendency now seems to prevail in some quarters to undermine that respect by torturing the meaning of great international instruments and by forcing them to serve purposes for which they were never designed, purposes at variance with the desires entertained by Governments when the instruments were brought into force. Evidence of this tendency was supplied by the International Military Tribunal at Nuremberg when it gave a spurious application to provisions of the Paris Treaty for the renunciation of war as instrument of national policy".

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It can therefore only be a question of refuting the oft attempted evidence that, despite the open break with international tradition, there was no infringement of the principle, *nulle poena sine lege*. Even those who welcome the judgment as legal progress and regard it as characteristic of the gradual development of case law that new ideas of law permeate imperceptibly into jurisdictional practice without there being any question of a break with the past, admit that, up to the IMT Judgment, no penal sanction for aggressive war had existed. This is a way of thinking that may possibly be feasible from the point of view of an historian, but from the standpoint of the judge is a monstrosity. It is certainly true that, in the course of development by the gradual abandonment of old legal conceptions, or the gradual introduction of new legal ideas, case law has adapted itself to the prevailing social and customary changes, but if there is any step in the development of law that requires a perfectly clear attitude as to whether the judge stands by what has been handed down, as is his duty, or whether he creates new law, which in principle should be left to the lawmakers, it is the introduction of the death sentence for an act for which, at the time of its commission, there was no question of penal sanctions. To use here the parallels of those cases of extensive or restrictive interpretation of an old legal maxim, is, to say the least, an astounding lack of judgment, in which political considerations have more weight than

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legal impartiality, what sense would remain in the prohibition ex post facto law if in extreme cases it could be swept away by such considerations? In any case, it was in the American Constitution itself that the principle, nulla poena sine lege, was first formulated, although the bulk of American law is case law.

If the new recognitions of the legal-sociological school for this purpose, without regard to the differences of method, are to be used, like those of the worthy Roscoe Pound, as a basis for dogmatic solutions, then we are not far removed from that dangerous attitude which places political demands in relation to law on the same level as existing law. Kelsen rightly says: "That the London agreement is only the expression, not the creation, of this new law is the typical fiction of the problematic doctrine whose purpose is to veil the arbitrary character of the acts of a sovereign law maker."

Neither is the conception at all true that the IMT Judgment has really opened the way towards universal punishability of aggressive war. The further away legal and political developments get from the end of the war, the more the process against the German war criminals assumes the character of a special procedure, which, for the rest, leaves unaffected the accepted non-punishability of violations of international law. The Prosecution authorities, it is true, rightly asserted in their Trial-Brief that the codification of the new^{international} law was planned to take place within the United Nations in the sense of the Nuremberg principles.

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Closer observation shows, however, that we are far from the realization of these plans. At any rate, the Committee on the Progressive Development of International Law, after having been occupied for six months with the task of codifying the principles of the I.L.T. Judgment, decided not to undertake the formulation of the Nuremberg principles, because it was obviously a task that demanded careful and thorough study. The Committee concluded with a resolution that it was not competent to discuss the material contents of the Nuremberg principles and that such a discussion would be better entrusted to the International Law Commission. It should further be emphasized that the representatives of Egypt, Poland, England, the Soviet Union and Yugoslavia refused a majority decision of this Committee which expressed a recommendation that the carrying out of the principles of the Nuremberg Trial and its judgment appeared to render desirable the creation of an authorized international court which could exercise jurisdiction over such crimes.¹⁾

Obviously, therefore, it is also wrong, to base assertions, like Schick and Nelson, ^{on the fact that} Russia's internal Penal Code likewise contains a law of retroactive punishment and in so far also breaks through the principle, nulla poena sine lege; the Russian breach does not go nearly as far; for this penal law is directed against the counter-revolutionary persecution and suppression of Czarist times and the confusions of civil war and was thus enacted after the full victory of the Communist revolution. In the present case, however, in the state of development reached in the summer of 1948

1)
cf. Schick "Crimes against Peace" in the "Journal of Criminal Law and Criminology" Vol. 38 (Jan.-Feb. 1948) p. 464 ff.

the conclusion can hardly be avoided that this trial was conducted in such a manner, at the expense of the defendants, as though a far-reaching change had taken place in the whole system of international law, whereas in reality the new ideas, even within UNO itself, are still meeting with the strongest resistance and are still very far from realization in general international law. It goes without saying that this conclusion is not meant to throw doubt on the bonafides of the initiators of the Nurnberg trials; Jackson himself demanded with the greatest emphasis that the victors should apply the new principles to themselves also. But why has the new Hague International Court of the UN merely received competence for disputes between States in the old style, without in the slightest taking into account the new ideas of international responsibility of the individual, as practised in Nurnberg? In any case, the International Criminal Court has not yet come into being nor will it do so in the near future, for, as is well known, the mere recommendation for a decisive organ within the League of Nations and within UNO means the open avowal of strong opposition against the realization of the recommended innovation; certainly no wonder, when both the Soviet Union and England are counted among the opponents.

This development in a sense stamps the Nurnberg Courts precisely as special courts *(Landgerichte)* for which a special law has been created ex post facto law. That is the sore point which explains the unusually sharp condemnation of the Nurnberg trials

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in Anglo-saxon quarters, into which for lack of time, I will not enter further here.

I will only mention the Italian law scholar, VEDOVATE, Professor of International Law at the University of Florence, who closes his examination of the Nuernberg Judgment with the conclusion that it would have been more logical and more in accord with the juridical conscience to say of the defendants, in the words of Robespierre on Louis XVI:

"Il n'était pas un accusé, mais un ennemi; il n'y avait pas de procès à faire, mais une mesure de salut public à prendre."

Professor Wechsaler, of the Columbia University, sought to justify the IMT Judgment out of the special nature of international law, by setting up the unproved and unprovable thesis that the maxim, nulla poena sine lege, was an accommodation of internal State law and of its nature alien to international penal law. However, the IMT-Judgment itself endeavoured to prove that its decision did not violate the precept, nulla poena sine lege.

The Netherlands Government also, when it refused to deliver up the Kaiser - without at that time provoking any opposition - obviously adopted the opposite standpoint, and if international law is to be supplemented by the recognized legal principles of civilized nations, then the Proclamation of Control Council No. 3 proves that the precept which excludes retroactive penal law belongs to the great

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constitutional achievements of which all civilized nations are proud. At the same time, this Proclamation of the Control Council condemned a relatively mild infringement of the precept, nulla poena sine lege. The National Socialist amendment to the Penal Code had only admitted the principle of analogy to a limited extent, and the Reich Supreme Court has established that ^{the} principle of analogy would always be non-applicable when legislation had purposely left an act without prescribed punishment. In the present case, however, it is a question of the revolutionizing of the system of international law ^{as} hitherto existing, of the sacrifice of the main principle itself, which can never be justified by any kind of analogy whatever. That a new situation of international law can be created for the future by laws agreed upon by way of State treaties, even Wechseler would not deny, and it was just such a form of legal progress that the Netherlands Government had in mind when it declined on the basis of the existing law to deliver up the Kaiser.

It is precisely in international law that the danger exists of political passions favouring the abuse of law, and therefore the maxim, nulla poena sine lege, is indispensable for this sphere of law. In an aide-memoire of 6 August 1942 - I am obliged for the quotation to Finck Note 17 - the English Government lays it down:

"In dealing with war criminals whatever the Court it should apply the laws already applicable and no special ad hoc law should be enacted."

The result of these conclusions can be summarized as follows:-
The sentences of the IMT Judgment on account of wars of aggression do not rest upon recognized principles of international law, but upon the agreement of the victor States, in which the German Reich did not participate. This agreement has the character of a Bill of Attainder and of an ex post facto law and therefore cannot be applied by an American court, any more than can the Control Council Law resulting from the execution of the London Agreement; for the American court does not bow blindly before every act of legislation, but is bound and accustomed to examine its constitutionality. Even the International Military Court, despite the fact that it recognized the London Agreement in principle as law, held itself justified on grounds of considerations of international law to refuse to adhere to it in so far as it threatened with punishment crimes against humanity which belonged to the pre-war period.

According to the foregoing, the Kellogg Pact does not come into consideration here. It is nevertheless, the real foundation for the IMT Judgment and for this reason the following points must still be referred to in connection with the present trial:

Kelsen's argument seems to me conclusive that the Pact to Outlaw War at most only outlawed war as such and not the planning and preparation for war. The ^{acts} involved in the "Planning and Preparation of Aggressive War", given by Control Council Law No. 10 the status of an independent crime,

are consequently not even covered by the Kellogg Pact.

Moreover, the IMT Judgment has itself recognized that armament in no way falls under the condemnation of the Kellogg Pact. In the section concerning Schacht, it states:

"But rearmament of itself is not criminal under the Charter. To be a crime against peace, it must be shown that Schacht carried out this rearmament as part of the Nazi plans to wage aggressive wars. The case against Schacht therefore depends on the inference that Schacht did in fact know of the Nazi aggressive plans".¹⁾

This is in accordance with the attitude of President Coolidge, who, referring to the military efforts of the United States in the World War, declared, on 11 November 1928, that it was the duty of the United States to itself and it was in the interests of civilization and of peace in their own country, as well as in the interests of regular and legal relationship to foreign nations, to maintain a commensurate fleet and army. Such a policy of supplementary guarantees was necessary, besides the Pact for the Condemnation of War. The cause of peace would be furthered actively by the Pact and passively through the military armament.

1) In the opinion of the IMT, moreover, Schacht did not achieve any such knowledge, on account of his proved participation in the occupation of Austria and the Sudetenland.

In praise of the Kellogg Pact, Coolidge said that it was the most complete and would prove the most effective instrument for peace that was ever created, because this Pact recognized "to the fullest extent" the duty of self-defence and did not undertake - because such an undertaking was contrary to human nature - to create an absolute guarantee against war.

Furthermore, the Kellogg Pact did not contain any sanctions against private persons. The political leaders of a people might possibly, in the sense of the order of ideas of the IMT Judgment, be made criminally responsible, but not private persons. Here above all lies the weakness in the statements of the chief prosecutor Jackson, who proves too much and therefore is unable to carry conviction in anything. Jackson argues in the following manner:

- In war people are killed and property destroyed, both crimes in themselves, which, however, according to the old conception, lose their illegal character through being committed in war. If, however, it is a question of a forbidden war of aggression, concludes Jackson, then this justification must disappear and the acts of war become nothing more than a number of criminal acts. If that were correct, then every German soldier would be a criminal, liable to punishment for every shot he had fired in the war, and everyone who had taken part in the armament would be an accessory to these crimes. The IMT Judgment itself passed over these arguments in silence, because they would signify an impossible extension of the Kellogg Pact.

Apart from certain war crimes, it is an absolute novum in international law to punish private individuals, a procedure which must raise most serious doubts. International law is a law governing the relations between States; even governments could not hitherto be held responsible as individuals. Even under the laws of warfare, apart from a few exceptions established by the law of usage, an individual who had acted under government orders was able to exonerate himself against a criminal charge. This peculiarity of international law is based on good reasons. How could government function if any citizen could make himself a judge on the political measures taken by his government? Who would protect him if he violated the laws of his country, invoking the provisions of international law? On 29 May 1931, the Supreme Court itself gave this point of view due consideration in the case of Macintosh. This was a case of a Canadian Professor of Divinity, residing in the United States, who had applied for U.S. citizenship, but was only willing to sign the required loyalty clause under the reservation that he would be entitled to decide for himself whether any war in which the United States might engage was just or unjust within the meaning of the Kellogg Pact, because he could not accept the obligation to take part in a war which he considered unjust. The decision of the Supreme Court of the United States stated that American law, while it recognized the rights of a conscientious objector, it could not acknowledge the right of a citizen to refuse his moral or armed help to the

State, if it were involved in a war which in his opinion was unjust. Mackintosh, therefore, could not reserve to himself the right to make a specific political decision.

This is an ancient problem. It has already been stated by Rousseau, who made the greatest spiritual contribution to modern democracy, that the decision on questions of foreign policy would have to be reserved to the Cabinet and it is an old English tradition that, in questions of international law, even the law courts obtain the opinion of the Foreign Office and base their judgment on it.

The criminal responsibility of the private person, which must not play any part in the question of the initiation of a war, has likewise no bearing on questions of the waging of war. Here, too, the decisions involved are of a highly political nature and must, of necessity, remain outside the judgment of the individual citizen; and, therefore, this point of view prevails in regard to the other counts of the indictment referring to the economic exploitation of occupied countries. The utmost that has been developed by religion and ethics, and not by law, is the so-called right of resistance against certain tyrannies, which however has never been a duty.

I now turn to the second count of "Plunder and Spoliation", as well as to the employment of forced labor from the occupied territories.

In comparing the various legal systems, one finds, time and again, confirmation that the legal solutions of certain

problems in civilized countries are to a large extent identical, although their basic systems are entirely different and, consequently, the reasons given for these solutions differ from each other to a considerable degree. This phenomenon, which over and over again proves the unity of the civilized world can equally be applied to other phenomena of social life. It has repeatedly been stated in Nuremberg that during the war respect for international law diminished in all countries and, hand in hand with the lowering of international law, which was considered formal and formalistic, there appeared that ideology which, with total war, proclaimed the slogan, catch as catch can.

The Nuremberg trials remind the German people of the importance of international law, but at the same time - in view of the unstable legal principles on which the conduct of the occupying powers since the capitulation has been based - they produce great confusion and, among many people, even indignation. There exists the feeling that two different standards are being applied, especially in view of the fact that the highest occupational authorities have bluntly stated that the Germans have no legal protection. Since the capitulation, great discussions have developed on the meaning of the term "unconditional surrender", and the longer these discussions last, the more emphasis is placed upon the indestructibility of fundamental rights, on which also the relationship between the victor and the defeated is based, and upon the inalienable nature of certain minority rights. There is one ray of light in this chaos, i.e., the

passage of the IMT Judgment (p. 155, German edition, Nymphenburger Verlagsanstalt, Munich), which says:

" These orders, then, prove Dönitz is guilty of a violation of the Protocol. In view of all of the facts proved and in particular of an order of the British Admiralty announced on 8 May 1941, according to which all vessels should be sunk at night in the Skagerrak, and the answers to interrogatories by Admiral Nimitz stating that unrestricted submarine warfare was carried on in the Pacific Ocean by the United States from the first day that nation entered the war, the sentence of Dönitz is not assessed on the ground of his breaches of the international law of submarine warfare."

This sentence states nothing less than that a violation of international law cannot be punished if former enemy countries, even if merely towards an ally of Germany, committed an analogous violation of international law. What is the legal significance of such a statement? Obviously, it does not assert that the violations of international law committed by both sides prove the existence of a usage which invalidated the violated international treaty, because it is expressis verbis stated that international law was violated and the opinion of the Tribunal is laid down as to how proper conduct in accordance with international law could have been observed. On the contrary, it asserts that the objection 'Tu quoque' is, of course, admissible. This calls for more detailed statements and a clarification becomes most necessary

Shakespeare's well-known quotation from "Measure for Measure",
 "That know the laws that thieves do pass on thieves?"
 must, of course, not be interpreted to mean that the poet considered
 the objection of Tu quoque basically irrelevant, because the sub-
 sequent verses prove that Shakespeare assumes that the theft committed
 by the juryman who takes part in the trial is not known to
 anybody, but this is the very prerequisite that is lacking here. It
 is not fair that judgments simply disregard facts incriminating
 the enemy States, as was done in the first trial in the case of
 Russia's attack on Poland, in order not to have to take up the
 question of the legal consequences resulting therefrom. Nor is it
 in order that they take the point of view that this question is not
 a part of the matter under consideration and is not the object of
 the trial because the indictment concerns Germany only.
 In the history of law, the Romans already dealt with the problem of
 Tu quoque. They reached the solution that the Magistrate who had
 punished the perpetrator of a crime must, at the request of the
 perpetrator, permit himself to be tried on the same legal principles
 on which the perpetrator was punished. Justinian has perpetuated
 as common law this principle and its application to the judge who
 passes judgment by including portions of the work of Ulpian and
 Paulus under the special title of the Digesta D 2,2,1 and 2,
 "quod cuiusque juris in alterum statuerit ut ipse eodem iure
 utatur". This point of view may suffice.

in a well developed judicial organization. If today a German judge, who himself buys on the black market, sentences a violator of the consumer law, the principle of justice is being observed, because the perpetrator has the right to report the judge and thus bring about the punishment of the judge. In our case, this possibility is lacking, because the organization of international tribunals is still in its initial stage. Therefore, a parallel to the legal reaction which is brought about by the accused raising the objection of *tu quoque* can only be looked for and found in times when judicial systems were still undeveloped, i.e. in the middle ages. However, at that time it was a recognized principle, at least where there existed an internal connection between the violation of obligations committed by both parties, that a person had to submit to judicial proceedings only if the claimant himself had fulfilled his own legal obligation. In Anglo-Saxon law, the principle of clean hands in the law of equity states the same thing as the maxim in the feudal law, "*Fides frangenti fides frangitur*". According to Flanck, the leading expert on medieval legal procedure, there existed, at that time, in manifold application, the rule: Whoever does not fulfil his own obligations, has no right to demand justice. (P. 389 of "*Das deutsche Gerichtsverfahren im Mittelalter*", Braunschweig 1879). These are solutions deeply embedded in law itself and placed on the same level as the principle of equality and the most important sentence in the introduction to the "*corpus juris canonici*", according to which nobody may do unto others what he does not desire others to do unto him, and even with the

biblical postulate: Judge not, that ye be not judged!

It must be admitted that, in an ordinary criminal trial, the defendant has of course not the right to refuse to answer because his judge and his accusers have committed a similar offence. Nevertheless, the idea somewhat recalls French law, in so far that the right exists there in a civil proceeding to reject the judge on the grounds that he is to be a party in a similar lawsuit. In fact, the right of rejection, which exists also in criminal proceedings, is indeed nothing more than a refusal to answer before a court so constituted. However, for the way of thought prevalent to-day, this refusal to answer a charge is certainly more customary in civil law. In a civil lawsuit, the defendant can apply the *exceptio doli*, if the complainant is obviously not inclined to fulfil his own obligations towards him. It must now be asserted, however, that the international criminal procedure, which is here concerned, possesses in its structure elements which the internal criminal procedure of the State against the accused does not have. The establishment of an offence against international law presupposes the establishment of a violation of international law and this violation of international law affects first of all and quite certainly the relationship between State and State. Therefore the defendant may, as for instance in the case of reprisals, put forward as justification the excuse that the State against whose subjects the offence against international law was committed, has itself done injury to the subjects of the violator State.

The violation of international law thus affects also the clarification of relations between the States involved to each other and in so far contains elements which are present in civil law. It is a question here of the effect of the basic ideas of reciprocity, which in the end rests on the fundamental equality of the State. The IMT judgment showed therefore a fine perception when, without further substantiation and excluding the point of view of reprisals, it simply acknowledged the fact that the Allies had committed the same violation of international law as exoneration for the defendant Doenitz.

The decision in the case of Doenitz has moreover a further special significance for the present trial. The acquittal of Doenitz acknowledges that total war was carried on at sea. The same applies to the war in the air. Goering was not indicted before the International Military Tribunal because, as Generalissimo of the German Luftwaffe, he led the detachment of fighter aircraft in the German air offensive against England in 1940, although also in this case violations^{WASH} committed against the Hague Regulations of Land Warfare.

When in 1919 the Interallied Commission for the Punishment of War Criminals of the first world war wanted to decide on the punishment of Germans for "crimes against humanity", the Americans opposed this desire, pointing out that "crimes against humanity" was too heavy a term.

Instead, they worked out a catalogue of 32 offences, taken from the Hague Regulations of Land Warfare and the law of the usages of warfare, some of which I name below - a full list is given in my Closing Letter: -

Killing of human beings, massacre and systematic terror.

Systematic organisation of hunger among the civil population.

Deportation of civilians.

Interning of civilians under inhuman conditions.

Forced recruiting of soldiers from among the inhabitants of occupied countries.

Plundering.

Confiscation of property.

Devaluation of currency and issue of false money.

Wanton desolation and destruction of property values.

Intentional bombarding of open cities.

Unnecessary destruction of buildings and monuments, religious and charitable institutions, as well as installations for education and art.

Destruction of merchant ships or of ships for the transport of civilians without warning and without necessary measures having been taken for the safety of passengers.

Destruction of fishing boats and lifeboats.

Intentional bombarding of hospitals.

Attacks on and destruction of hospital ships.

Violations of other Red Cross regulations.

Mistreatment of the sick or of prisoners of war.

Employment of prisoners of war on prohibited work.

Final Plee WAHL

Of the list of crimes against the agreements and customs of military law, the Nuerenberg trials did not charge the German defendants with nor make grounds for punishment of all the offenses which constitute so-called total war in the air and at sea. No charge on the grounds of the bombardment of open towns, although in 1940 Goering led the aerial campaign against England, no condemnation of Doenitz on the grounds of the unrestricted U-boat warfare, no charge on the grounds of the destruction of hospitals etc. i.e. all offenses committed in the war at sea or in the air in the interests of waging total war were not included in the indictment because the Allies committed the same offenses.

It is most clearly apparent that total war against Germany was planned and carried through successfully from the paper by the American Air Commander in Chief SPAATZ in the April number of "Foreign Affairs" 1946. He does not justify the unrestricted bombing of Germany on the grounds that Germany had begun to erase towns in England, but says that the British had intended from the beginning to bring Germany to her knees with the aid of the Air Force. Owing to lack of means, however, they would not have achieved this alone, and the picture did not change until the Americans, who had been pursuing this strategic policy since the thirties, entered the war. In 1943, in a conference of the

allied Combined Chiefs of Staff in Casablanca, it was decided that unrestricted bombing should be carried out against Germany, its towns and industrial centers, thereby shattering its economy and annihilating the moral resistance of the population.

I quote some sentences from Spaatz' paper:

"Strategic bombing, the new technique of warfare which Germany neglected in her years of triumph, and which Britain and America took care to develop, may be defined as being an independent air campaign, intended to be decisive, and directed against the essential war-making capacity of the enemy."

"British leaders had this strategic concept in mind at the beginning of the war".

"The strategic concept had also been the focus of studies and planning in the United States Army Air Forces in the 1930's."

"The critical moment in the decision whether or not this should be done came on January 21, 1943. On that date the Combined Chiefs of Staff finally sanctioned continuance of bombing by day and issued the Casablanca directive which called for the "destruction and dislocation of the German military industrial and economic system and the undermining of the morale of the German people to the point where their capacity for armed resistance is fatally weakened." To implement this directive there was drawn up a detailed plan. "The Combined Bomber Offensive Plan", which was approved by the Combined Chiefs

of Staff, June 10, 1943, and issued to British and American air commanders. Strategic bombing at last had the green light; and it possessed a plan of operations of its own, with an approved order of priorities in targets, to achieve the objectives of the Casablanca directive. That plan called for bombing by night and by day, round the clock."

German statistics give terrible figures witnessing the effectiveness of the bombardment of Germany. Millions of civilians were killed, private property, in particular houses and factories, but also countless cultural monuments, hospitals etc. were destroyed.

If total war made this type of destruction of human life and private property a method of war for both parties, then in my opinion the theory cannot be maintained that the use of the economic potential of the occupied territories constitutes a criminal violation of the Hague Rules of Land Warfare. / The use of civilians for labor is a minus quantity compared to their killing, just as allowing foreign plants to operate means a lesser incursion on personal property than their violent destruction by bombing. It is true that the Allies did not make use of these offenses in the same way to wage war as did the Germans. But, as the beginnings of Russian methods of occupation showed in the border states under belligerent occupation, before the German collapse, this was only because

To be followed p. 41a

If a statesman sees that the war potential of his country is attacked by aerial warfare in a manner which cannot be reconciled with the law as we know it, he cannot be blamed on legal grounds for using, in the interests of his war effort, whatever industrial capacity in enemy countries is in his power. The initiation and gradual intensification of that German wartime policy in the occupied territories ran parallel with the increasing use, by the other side, of the methods of total war. The least that can be said is that in accordance with the principles of *tu quoque*, he must be denied the right (*Aktivlegitimation*) to pass judgment, who has himself waged war upon civilians in such an unscrupulous manner. I am not discussing the moral aspect of the problem in this connexion. Feilchenfeld, whose book I shall discuss in detail further on, has formulated the question as follows: should it be maintained somewhat unrealistically that States might be prepared to lose wars by refraining from actions which are absolutely necessary if victory is to be achieved, or should not rather the revival of the old concept of *raison de guerre* be given careful consideration. In the interests of international law the second of these alternatives should in my opinion be turned down, since it would bring great misery upon mankind. In actual fact however the States were inclined to act in accordance with what was called military necessity. What other explanation is there for the order given by Secretary of State Stimson that the first atom bomb be dropped on Hiroshima without previous threat or warning, although it would have been possible to issue either?

But we can leave the moral argument there. What matters in this trial is the legal argument that, aerial warfare and even atom warfare having been waged against Germany and her Allies irrespective of the limitations laid down in international law, Germany herself, let alone the industrialists and business men on the defendants' bench who acted solely in accordance with instructions issued by the government, cannot possibly be brought to justice, by her very enemies, for having committed offences against military law, which although they also involved civilians, were in fact far less serious.

the Allies had no opportunity of so doing, since the course of the war never gave them the opportunity for a lengthy occupation. If one spares a moment's consideration for the conditions which have arisen since the Armistice in the occupied territories, one cannot at any rate say that the exploitation of the economic potential of the occupied territories lies outside the range of their methods.

Against these arguments a major ad minus one cannot object either that the seizure of factories and the compulsory employment of civilian labor is an entirely different matter from the effect of bombing and therefore the conclusion that bombing is permissible is not cogent to the admissibility of the German occupation measures.

In naval warfare there is an inner connection between a prize and a sinking, since in both cases property is actually decreased.⁸⁴⁾

Transgressions of international law committed by the Germans are of minor importance that the question is purely negative is revealed by the consideration of primarily an economic nature.

that the measures employed by the German occupation forces, in whatever legal form they were clothed, could apply only for the duration of the war. That the compulsory employment of forced labor was only a war-time measure is obvious. But even the seizure of a factory is of importance only during the war. There are three possibilities: either the occupying power which has commandeered the factory wins the war, or it loses it, or the result is a deadlock. If it wins the war, it concludes the peace treaty on the basis of a capitulation and then legalizes its economic measures through the conclusion of peace -

⁸⁵⁾ The Anglo-Saxons, as in many spheres of their law, still cling here to its older stores and altogether have never ^{really} fully adopted the limited conception of war, as defined by Rousseau and developed in the 19th century; it is only necessary to think of their restricted interpretation of article 23 h of the Hague Regulations of Land Warfare concerning the economic war, and their treatment of enemy property in general, where the right of confiscation by the Crown still exists.

the same applies for the actual treaty peace in the case of a deadlock - or also it loses the war and the factory naturally returns to the possession of the occupied foreign country. Not for nothing does German penal law define theft, and pillage is a form of it, as the seizure of movable property belonging to someone else, since in the case of an immovable object the seizure has a different character from the outset, since the ultimate suspension of the rights of ownership of the person robbed cannot here be realized at all. If in the Hague agreement one reads of pillage and spoliation, the first thing which actually enters one's mind is a picture of marauding soldiers who seize people's movable possessions from them by force. Anything that disappears in this manner very seldom returns, unless some particularly striking objects such as the Crown Jewels are concerned, the identification of which is particularly simple for obvious reasons. In the case of immobile objects the position is different from the outset. (XXX)

To conclude this count, let us once more examine the book by the American expert on international law, Ernst H. PHILCOX, "The International Economic Law of Belligerent Occupation", Washington 1942. The author wrote the book during 1940/41, which is particularly important because his expositions show the view of a contemporary mind held of the continued validity of the Hague Agreement on the basis of the development of national and international law even before the experiences of this war.

(XXX) It may be that not all the German authorities thought of the possibility of an unfavourable outcome of the war from Germany's point of view when taking expropriation measures. The business man, on the other hand, makes it his policy to allow for all eventualities in his calculations. For him at least, all transactions were, by their very nature, calculated to be effective for the duration of the war only.

Even Feilchenfeld cannot make up his mind to declare the Hague Agreement entirely obsolete. He rightly points out, however, that the picture of peacetime economy, the fundamental principles of which the Hague Agreements wanted to maintain even during the war, had, in consequence of the nationalization measures which have come into force since 1918, of the increasing direction of industry, of national confiscations and quasi-confiscations, among which must be numbered foreign currency legislation, undergone profound changes by the time of the outbreak of the second world war in comparison to the liberal times in which the Conventions came into existence. Even the first World War had already revealed the tendency towards total war, which, with its mobilization of the entire civilian population as well for war work, no longer corresponded to the conception for which Rousseau's limited theory of war, with the separation of civilians and military personnel, was intended. He therefore prefaces his book in Chapter I with a number of general sections, such as "The nineteenth century background of Section III of the Hague Regulations" and "The International Economic Law of Belligerent Occupation under the Impact of State Socialism and Total Warfare" and writes:

"The Hague Regulations assumed a definite kind of normal peace optimism, namely that prevailing in the nineteenth century.

Since then this peacetime optimism has gone up in certain respects, but has gone down in others." (Page 18, No. 73)

"In modern war, a far higher percentage of civilians, including women, are called on for war work. Whole civilian populations

are at least potentially made subject to forced labor for war purposes. Civilians of this kind can hardly be said to be private individuals in the sense in which this term was used when wars were supposed to be fought only by princes and armies. Their work and their wealth are of military relevance. A hostile belligerent may be tempted to treat them as such." (P. 19, No. 75).

" If one considers the treatment now meted out to enemy property and civilians in belligerent countries and in naval warfare, one is driven towards the conclusion that the protection of civilians in occupied regions provided by the Hague Regulations is becoming a limited survival rather than the expression of universal truths and practices." (Page 21, No. 85).

Thus the trained observer could not but be uncertain in his legal conclusions and in view of the practice of total war now being introduced by the nations on both sides could not be conscious of wrong-doing if he acquiesced in the instructions and methods of the Government in order to exploit the economic potential of the occupied territories.

Total war has stamped our time as the most inhuman in modern history. The individual is assessed by his Government merely according to his value for the purposes of waging war, and the enemy considers himself justified, because he desires to cripple and destroy the war machine, as the terrible expression is, in also starving and bombing unarmed citizens and even in making low-flying attacks to shoot them down in the streets.

Final Plan, Wahl

The difference between soldiers and civilians appears to be obliterated. The civilian too, finds his life endangered, or forced labor makes him little better than a prisoner. The economic efforts of the big modern states, which, even in peacetime are organized in much the same way as a beleaguered fortress, are but a short step to forced labor. Indeed, so nearly have these efforts become the corner stone of their economic charter that when the United Nations Commission on the Rights of Man met in 1947, Russia declared she would have to oppose the prohibition of forced labor and deportation.¹⁾

The circumstances being such, can it really be said that forced labor and deportation are inhuman war crimes according to the established principles of the law of all civilized nations, if even in peacetime such practices by the state are held to be admissible? But as expounded above, the purpose of the Hague Regulations was to preserve the freedom of the individual and his property in time of peace, as indeed it did^{so} in the happier days when the Hague Convention was drawn up. But let us suppose there are two totalitarian countries, with their highly organized economic systems, and that one of these has been occupied by the other by force of arms. If the Hague Convention is applied literally, then the occupying power would have to make of the occupied territories a paradise where the individual enjoys perfect freedom of person and property.

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See Max Barth "Observations of a European" in the publication "Prison" (Munich), December Number 1947. Pages 14/15.

a condition unknown either to the occupying power or to the occupied state since the change over to the totalitarian system. This example shows that the methods of the occupying power, which also aim at the keeping of peace and order in the occupied territories — one has only to consider the problem of the unemployed in modern times — compel the occupant, by reason of the structural change in peacetime economy, to introduce also in wartime new methods of occupation, which cannot be built on the immovable foundations of the Hague Code. Incidentally, the critics of the methods of occupation now being applied in Germany very often fail to appreciate sufficiently this point of view, even although after the capitulation other legal principles come into question.

Final Plea, 1941

I come now to the crimes against humanity — to a newly established offence under criminal law, the contours of which are only beginning to be outlined. This Court introduces the third main argument — that of the penal responsibility of private individuals under international law.

The fundamentals of the argument were already touched upon when dealing with the question as to whether the Kellogg Pact established the individual responsibility of the citizen, in which connection reference was made to the Mackintosh Case. The idea then unobscured, that the Government of a country loses its freedom of action, if every citizen, in the name of international law, sets himself up as judge of its political decisions, and at the same time the individual is entirely without protection if he refuses in the name of international law to carry out the orders of his Government, shows the two angles of the argument — the international and the national.

Let us take the international angle first. The Inter-Allied Commission for the Punishment of German War Criminals of the First World War turned down the conception of crimes against humanity as being too vague. When considering the newly established criminal offence, the D.A. Judgment exercised extreme reserve — indeed, to all intents and purposes it drew no inferences — because ordinary criminal law and the law governing warfare were deemed sufficient to deal with these crimes.

The lecture given at the Sorbonne by the French Judge-in-Chief at the International Military Tribunal, Professor Darnandieu de Labre, the highest authority on international criminal law, shortly after his return from Nuremberg, throws light on this point:

"..... The Tribunal was also mindful of the need to uphold state autonomy, which is tantamount to the need to apply an undisputed principle, i.e. that of distributing the work according to the interstate relations. This is shown by the stand taken by him to the Count of the Indictment - Crimes against Humanity - enunciated in the Charter and frequently mentioned in the Indictment. The charge of crimes against humanity is likewise a newly introduced element, in so far as it goes beyond criminal offenses according to law, such as murder, assault - and embraces ill-defined acts which are not punishable according to ordinary law, such as, persecution on political, religious or racial grounds. To bring a charge for acts such as these is to run the risk of opening wide the door to arbitrary action. When he (Hitler) planned to seize the Sudetenland and Danzig, he accused the Czechs-Slovaks and the Poles of crimes against humanity. Such accusations constitute a pretext for interfering in other nations' internal affairs. They detract from their independence. They are a danger to peace.

Lastly, they are alien to international law, as well as to the internal law of most countries. They could only be brought and upheld by violating both the spirit and the letter of the principle establishing what constitutes a crime and a punishment."

But not only the introduction of a new delict is an ex post facto law, but also the holding responsible of individuals, the more so if the right to plead the necessity to carry out a superior order is eliminated. So far, international law has not held private individuals responsible for the misdeeds of the political organs of the State. Thus, according to the rules of traditional international law the punishment of enemy war crimes is not admissible if the deed was not self-activated, but committed in execution of superior orders, that is if the deed can be imputed not to the individual perpetrator himself, but to the Government of the State. In the famous standard work on English theory of international law, "International Law" (Oppenheim (4th. Mc Nair Edition - 1926. Par. 253) we find this passage: " Violations of rules regarding warfare are war crimes only when committed without an order of the belligerent Government concerned. If members of the armed forces commit violations by order of their Government, they are not war criminals, and may not be punished by the enemy. The latter may, however, resort to reprisals".

We also know that the attempts, in the case of violations of the laws of naval warfare, to subject U boat commandants by way of an international convention to direct liability to punishment under the terms of international law by considering them as pirates being hostes generis humani, have been foiled.

The opposite point of view is taken in the Justice case judgment in Nuremberg. The limitation of responsibility to "those who act directly on behalf of the State" as postulated during the IMT by the French Prosecutor de MEYER in his speech for the Prosecution on 17 January 1946, is observed no longer. In accordance with the new version any subject of a State is supposed to have committed a crime against international law if it can be proved that he "knew or should have known that in matters of international concern he was guilty of participation in a nationally organized system of injustice and persecution shocking to the moral sense of mankind, and that he knew or should have known that he would be subject to punishment if caught." (Page 32a of the judgment).

The theory is formulated so clearly that we are obviously dealing with a breach of the present provisions of international law, resulting in a recognition of ex post facto law. We do not of course wish to maintain that ordinary crimes should go unpunished, but

let the Prosecution charge the defendants with such crimes, and prove them.

It was at any rate one of the provisions of the French proposal submitted to the U.N., which did not, however, gain the majority of votes in the 8th conference for the standardisation of criminal law, which recommended more incisive measures, that particularly in the case of crimes against humanity, which usually spring largely from national institutions, responsibility be limited to the political leaders concerned, and the executive organs be subject only to the criminal law of that particular nation.

By so doing the French proposal followed the tradition of international law as formulated for example in the Geneva anti-slavery agreement of 1926. That agreement has been ratified by practically all the nations of the world, including the USA, although the latter did reject for their nation in a reservation with reference to article 5, section 2, compulsory and obligatory labour for public purposes which had been acknowledged as a tenet of international law by the rest of the world. It is by the way laid down in article 5 that compulsory and obligatory labour for public purposes is permissible even when it involves change of residence and when no remuneration is paid.

Section 3 of article 5 reads as follows: "It is in every instance the central authority of the territory concerned which shall be responsible for the use of compulsory labour or the obligation to work."

In accordance with the provisions of section 3 the governments alone are to be held responsible under the terms of international law, whereas the individuals concerned are to be relieved of responsibility in accordance with the general principles of international law, as stated in detail above.

With reference to the national problems which arise in connection with this point of the indictment I would like to start with a personal reminiscence: When one read, prior to 1933, of the atrocities committed during the Russian revolution, or of conditions in Russian forced labour camps, one said: "Thank heavens we're in Germany and not in Russia. In Germany those things would be quite unthinkable."

It may be supposed that similar thoughts come to the minds of American judges when they learn, in the course of the Nuremberg trials, of conditions in German SS camps, and they might say: "In America such things would be quite impossible." If the attempt is to be made to explain why those things could happen in Germany, which every sane German had thought to be absolutely impossible, it should above everything else be pointed out that the German constitution developed in such a way, that it became quite impossible after a certain date to oppose any measures, however criminal, carried out by the State. At the beginning National Socialism scored some resounding successes, especially in combating unemployment.

and even sceptics gave it a chance.

The government took advantage of that period of economic recuperation to throw over the whole of Germany a fine net of steel, and to turn the whole machinery of national socialist power, not without reference to foreign exemplars, into a man-eating Moloch which left the people no choice. When the camouflage wore thin in places, and when perceptive men here and there realized in spite of propaganda that the government would not stop short of crimes, it was too late; and the process repeated itself throughout the land.

But that involves legal problems of extraordinary difficulty. Criminal law as we know it has not been called upon to develop, and has not therefore developed, a system which could have coped with the criminal state (Staat criminal). Was it not true that the State itself had been considered until then as the exponent of legal order and of legal progress. But in Germany, unscrupulous positivists had seized power and forced the whole nation to serve their purpose. In a way it is obvious that the terrible conditions which prevailed in German concentration camps called for expiation under criminal law, and it is natural that in the first flush of indignation against these crimes the limits of complicity laid down in criminal law as we know it were exceeded so as to include everything connected in any way with these crimes.

One might almost say that it is a characteristic feature of crimes against humanity, that a new type of crime is recognized in addition to the actions such as murder, injury etc., recognized as crimes in traditional criminal law, i.e. persecution for reasons of race, politics, or religion, which naturally increases the number of those responsible.

But it is precisely in the totalitarian State criminal that the number of those responsible is thus increased to an inadmissible extent. Everybody who worked in Germany, at the front or at home, even if he was only paying taxes or tilling the soil, played a practical part in furthering the ends of a criminal regime by so doing, and was therefore an accomplice to the crimes committed by the government, provided he was aware of them.

But the IMT judgment has rightly opposed the theory of collective guilt: thus it distinguished clearly, in the case of the SS, between membership of a criminal association, and commission of the actual crimes.

The following is a passage taken from the IMT judgment (Page 113, Symonburg edition):

"The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the SS and enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal

by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such crimes."

That quotation also involves the second point of view by which responsibility under the terms of criminal law was limited: The use of the concept of the state of emergency. If the SS man had no choice but to join the SS, he is not liable to punishment because he was a member of the SS, even if he was aware of the crimes committed by the SS, provided only he had committed no such crimes himself. But that formulation does not, of course, mean that the excuse of the state of emergency shall not apply to such other acts as he may have committed because he had been forced to join the SS. Whether the unlawful order as such is accepted as an excuse or not, the pressure thus brought to bear upon the person concerned ("Zwangssituation") is negligible. In the moral state, the subject can usually complain against an unlawful order, and higher authority will right the injustice. No such possibility exists in the Nazi criminal. He who would complain

courts selfdestruction, or at least dire peril for himself and his family, in accordance with the principle of collective responsibility of the family. There is nevertheless some point in the ruling of the London Charter with regard to the defendants in the first trial who were all leading personalities of the State, that the order be considered as an extenuating circumstance, but not as exempting from punishment. Such men have better chances of protecting themselves in an emergency than have ordinary private citizens. That is why the concept of the state of emergency was largely used in defense of the defendant in the first trial, in which ordinary private individuals were concerned, the Flick trial. I should like to refer you to the lengthy quotation contained in my closing letter, which shows that it is simply inadmissible to ignore the fact that the individual is inextricably transrolled in the meshes of the State, or to postulate from the point of view of international law that the individual be liable to punishment as an accomplice to the crimes committed by the totalitarian State.

To come now to the defendants themselves: each one of them has submitted proof that during his whole life he has striven to bring about human progress in the fields of social welfare, industry, medicine and civilization, and the many humane actions testify that each one persisted in this way of thinking throughout the Hitler period. To cite only one example among many, let us recall here the questions of personnel policy which arose as a result of the government measures for eliminating the Jews from the industrial life of Germany. These men are now charged with having employed

forced labor, prisoners-of-war, concentration camp inmates, and for the treatment meted out to them.

How did these men come under the shadow of crime; how is it at all possible that such suspicion could come to rest on them?

The circumstances set out in the foregoing give the answer. To understand the behavior of the defendants one must think back to the conditions which prevailed at the time. I will endeavor to explain their subjective position, that is, their motives. In so doing, I will take the attitude typical of the German intellectual, who at heart was not interested in politics, to whom the National Socialist Movement was a natural phenomenon, and who at first failed to understand fully the dead seriousness of this ideology, having formed the mainspring for his intellectual life in very different times. The preoccupation of the individual with his more or less restricted specialized sphere of activity drew him, at first gradually, then in an increasing measure, into the set-up of the State and the Party, in which he could rest satisfied that the work in his particular sector was progressing. Naturally, he was not unperturbed by certain concomitant circumstances of the totalitarian state, but at first he conceived these to be merely teething troubles, and hoped that the phase would pass.

Others too, told themselves that one must put up with these inconveniences; the main thing was to stem the onrush of Bolshevism against Europe, and history shows that the only way to fight an enemy armed with new weapons is to use his own methods. Only by adopting many of the ideas and measures of revolutionary France was Prussia able, after the defeat in 1806, to find the strength to play a decisive part in the overthrow of Napoleon.

It was not until the war had broken out that the individual came to perceive that these secondary phenomena occupied the centre of the scene, and realized the brutality and

cruelty of this State, although for most people the extent of the enormity remained concealed until the end.

Thus, to an ever-increasing extent did the fear of coming into conflict with the State, or of being destroyed together with one's family as a saboteur, a defeatist, or an ideological opponent, become the underlying motive of his behavior. The closer he came into contact with the cruelties of the system, the more this fear grew. Hitler well knew the aversion of the ordinary German to his methods, and used every kind of threat to compel the people to bend to his will.

Notwithstanding, it would be incorrect to say that these men behaved in this manner solely from fear. The intellectual is wont to render to himself a minute account of his position and of the motives for his behavior. Every one of us has lived through hours under the past regime when naked fear excluded all else. But with the return of a measure of calm, this gave way to other thoughts. The defendants too experienced the same thing. They too reasoned in a way that appeared to justify their conduct even from an objective angle. It must be left to the psychologists to decide to what extent this rationalizing was merely the result of inhibitions. Be that as it may, even in retrospect, some of these considerations must be construed as cogent reasons, contributing to produce a situation which must be regarded as a genuine case of a conflict of loyalties.

Final Plan Loh

- 1) First the national problem: should one commit acts of sabotage even at the risk of exposing one's people to defeat in this struggle for life and death, one's people whose sense of discipline and spirit of self-sacrifice are already strained to breaking point? One must have experienced the tragic inner conflict of the man who, torn between love of his people and his fatherland and the desire to have done with the criminal tyranny of Nazism, sought in vain for a practicable solution. His children were serving at the Front. Could he fail in his duty there? For even as late as 20 July 1944, the belief was still widely held among the intelligentsia, that the Generals would succeed in overthrowing Hitler and bringing the war to a close while still avoiding total defeat.
- 2) Each one of these men was entrusted with grave responsibilities, not only towards the foreign conscript workers, concentration camp inmates and prisoners of war, but also towards the free workers, who, in fact, formed the greater part of the staff, to say nothing of the remainder of Germany proper, of science, the churches, and that section of ^{the} Press which, in spite of everything, had retained a certain freedom of its own — the help and support of the I.G. was of importance to them all. Could one be justified in forsaking them?
- 3) If the defendants had, in fact, withdrawn from the scene of the crime and had gone to the Front or taken up other work, they could have had to admit

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to themselves that they would be continuing to serve the
Etat criminel, further removed from the source of the crimes,
it is true, but serving its purpose none the less effect-
ively, and, moreover, without having taken any practical or
effective step towards preventing the commission of the crimes,
since their successors would be forced to act in precisely
the way in which they themselves would have acted.

- 4) Yes, the defendants were justified in saying that they fulfilled
a higher duty in remaining at their posts in order to oppose
the evil, in so far as this was within their power, and to
strengthen the good, than in escaping from their responsibility,
thus leaving the field open to an unscrupulous successor who
would have served the Regime well. When one considers that
throughout Europe, the I.G. of all firms, enjoyed a reputation
as one of the leading enterprises in the sphere of social wel-
fare work, it is impossible to exaggerate the importance of
the danger of such a deterioration in conditions, a deter-
ioration which, moreover, is said to have affected primarily
the foreign conscript workers and the concentration camp in-
mates. There have been cases enough in which boards of manage-
ment, through having a single Nazi fanatic planted in their midst,
have found themselves frustrated in every effort to counteract
Party aims and methods.

Thus, in addition to the state of emergency in which the de-
fendants found themselves, there was the conflict of duties
to which the Court might give mature consideration. The outside
observer's first impression might well be that of indifference
towards the baseness of the SS State. The truth of the matter
is

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quite the contrary. The situation was unique: the terrible pressure exerted as a means of compelling complicity in the achievement of the most dreadful aims of the State and which reflected not the slightest sign of horror at the elimination of all that was best, left no choice, more especially as it was possible in this way and in this way alone to achieve at least some considerable measure of success in lessening the evil, with the result that it was precisely the man who was conscious of his responsibilities and who thought less of his own danger than of his moral obligations, who felt compelled to follow the path chosen by the defendants. The problem resolves itself into the question of whether or not one looks upon the defendants as men of honor who could be relied upon in time of stress, to follow the path dictated by their conscience.

Closer study of the crime has revealed those depths of the problem which go beyond the mere text of the law, the depths of a problem which, under the ^{reading} / of the choice of minus malum, moral theology has for centuries dealt with, stating, that it is permissible to create the external conditions constituting a criminal action, if in this way, a worse evil is prevented.

Professor Heinrich von WEER, Professor of Penal Law at Bonn, writes in the "Monatsschrift fuer Deutsches Recht", year 2, Volume 2, February 1948:

"The Nuremberg verdict expresses astonishment, nay indignation at the objection raised by the defendants on the grounds that they had acted on higher orders, and accuses them of duplicity, not to say, dishonesty. 'Many of these men', so runs the verdict, 'have made a mockery of the soldier's oath of obedience

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to military orders. If it is more advantageous for their defense, they say they were forced to obey orders; if one reproaches them with Hitler's crimes, having established the fact that these were a matter of general knowledge, they say they refused to obey orders." And yet this conduct can be soundly justified not only on ethical but also on legal grounds, the basis of the conduct being one which can readily be acknowledged by the man who places himself in the position of the recipient of the orders. Let us assume that his first reaction is to resolve, regardless of personal danger, to refuse to carry out the order. He then reflects on the consequence of such an action and becomes convinced - and rightly so - that someone else who will obey the order without further ado, will replace him in the position which he vacates. He now resolves to remain at his post; if he cannot prevent the execution of the order, he can at least lessen its effects and limit the amount of harm done by it. In other words, the conflict of duties, given the choice between two evils, the lesser, involving active co-operation, and the greater, involving merely passive acquiescence, resolves itself by choosing the lesser of the evils. It is true to say of this case also that there is no choice which admits of the complete avoidance of wrong; the recipient of the orders has only the choice between two evils, and his choice of the lesser can be no grounds for reproach."

Final Plac Wahl

It is stated elsewhere that, in given circumstances, one must recognize "that the greater moral courage is often required to remain at one's post and to co-operate in the execution of orders, while striving to restrict the effect of such orders, and that much harm was prevented by such conduct on the part of men of principle under National Socialist domination. Legal opinion must not be allowed to overlook this fact. Moreover we must refrain from raising the objection that this evil could have been completely eliminated had all subordinate officials refused to obey orders. We are not concerned here with the collective guilt of an entire class, but with the criminal liability of the individual, and the judgment of such criminal liability must accept as its starting point the fact that the possibility of unanimous refusal to obey orders on the part of any one class would have been a mere illusion."

A few further words on the subject of Conspiracy: In my Closing Letter, I have presented evidence in proof of the fact that in former times, it was the continental concept of a "Komplot" which corresponded to the Anglo-Saxon concept of conspiracy, but that this had disappeared from the books of penal law in the middle of the last century, as the mere judgment of conspirators, the basing of judgment on assumptions of guilt which it is more or less impossible to refute is no longer in keeping with the demands of our present legal system, namely that the individual be held responsible for any contribution which he has knowingly made to the commission of a crime.

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The recognition of the crime of conspiracy therefore contradicts the recognized principles of the civilized nations.

For the rest, the most recent investigations conducted by the Americans to establish the stage of advancement of the German armaments program at the outbreak of the war, investigations of which I have spoken in detail in my Closing Letter, have shown indisputably that Hitler's preparations were totally inadequate for the conduct of a war, and that for precisely this reason, the export could not but look upon aggressive war as an ^{act of} madness. From this it is clear that, in contrast to the factors constituting guilt under the legal provisions governing conspiracy, nothing could have been further from the thoughts of the defendants than that Hitler was planning a war of aggression.

Your Honors,

In view of the time limit imposed by the Court, I am forced to come to a close. The development of the totalitarian states, was, in itself, the widely recognized expression of the inherent ~~power~~ ^{crisis} of justice. The legal ~~system which prevails in this country~~ ^{ground is not humanity should be day} ~~is~~ ^{is an up level} ~~today still stands on these foundations~~. Our present need is for judges who, far from dealing yet a further and more overwhelming blow to the already shaken ideals of our legal tradition, will re-establish them so that they may become strong pillars in the building of a better world. Failing this, a cynical nihilism, bringing in its train we know not what unpredictable consequences, would fall to the lot of the German race and the Western world would have failed in its great opportunity.

Though compelled by lack of time to refrain from pointing out the many ways in which they apply to the present proceedings, I should like to add two quotations.

Final Plea

The first is by our poet Franz Grillparzer, the second by your
Abraham Lincoln:

"Just to oneself and other men to be -
This is the hardest task in all the earth -
Who justice knows is monarch of this world."

"Fellow Citizens, we cannot escape history, we of this Congress
and of this administration will be remembered in spite of our-
selves. No personal significance or insignificance can spare
one or another of us. The fiery trial through which we pass
will light us, in honor or dishonor to the latest generation.

Final Plea Wahl

CERTIFICATE OF TRANSLATION

1 June 1948

We,

Victoria ORTON,	ETO # 20129,
Julius J. STEUER,	AGO - A - 442654,
Patricia E.C. WOOD,	ETO # 20139,
Beryl C. BESWICK,	ETO # 20183,
Anna MARTIN,	ETO # 20144,
Leonard J. LAWRENCE,	ETO # 20138,

hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of Final Plea Wahl.

.....
Julius J. STEUER
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Patricia E.C. WOOD
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pages 51 - 56

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Final Plea, Overall Picture of Farben

(English)

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Finch Roan Ouzel's Picture up Finch
(Eurasian)

Case 6
Deprise

Final Plea

"Overall Picture" of I.G. Farbenindustrie Aktien-
gesellschaft"

held before the American Military Tribunal No. VI

Case 6

United States of America

against

Carl Granch a.o.

by

Friedrich Silcher

Attorney-at-Law

Tung



Final Plea Gilcher

" Overall picture of I.G. Farbenindustrie Aktiengesellschaft. "

Summary compiled for the Press.

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Corrections to be made in the Final Plea S i l c h e r

"Overall Picture of I.G. Farbenindustrie Aktiengesellschaft"

- P. 1, l. 8 Insert "as in the German" after "as well"
- P. 11, l. 6/7 Delete "the numerous products for plant protection and the insecticides".
- P. 16, l. 12 Insert "and carried out" after "concluded"
- P. 21, l. 13 Insert "and which receives such a hearty and unreserved welcome by myself and, as I know, by all my friends in the dock." after "depends on".
- P. 45, l. 17 First word "themselves" should be "Germany"
- P. 51, last line "our" should be "your"
- P. 52 Change lines 1 and 2 to read :
"Think of all this when you pronounce your judgment in this way that it will include a moral verdict on Farben!"
- P. 52 Change line 4 to read :
"vicious words: 'ready to bloom again and to yield its fruits'. Some months ago I"

May it please the Tribunal:

In this trial formally only the twenty three defendants in the dock are indicted and not the firm I.G.Farben. However this firm from a moral point of view is the invisible defendant who in addition to those twenty three men has been mentioned time and again in this trial. Your Honors only need to read the indictment in order to gather therefrom this inescapable impression. Therefore in the world's public opinion as well, this is in reality a trial against the firm I.G.Farben. For this reason alone it seems necessary to speak once in the course of the defense of I.G.Farben and to defend this firm. Therefore the defense has deemed it proper to draw in addition to all the other pleadings an overall-picture of I.G.Farben. And this task was assigned to me who for long years was a member of its staff.

Essential parts of such a canvas of I.G.Farben would be missing should the charges which presently are voiced in the general public be passed over in silence. This indeed would mean a closing the eyes when confronted with such charges. This overall picture shall be presented now in this statement being the last of the twenty five preceding arguments of the defense which, in our opinion, dealt in an exhaustive manner with the different counts of the indictment. Hereby this part of the picture has been already given. Therefore, and in view of the difficulties arising from the limited time available for the pleadings, my task will be restricted in substance to sketching the frame and background, and to call up the vision of I.G.Farben as it was and existed.

without considering the charges raised in this trial, in the same way as one tries to screen the character of a man who is indicted for a crime, under the aspect of his being capable thereof. If accordingly in view of this scope of my task this will not be a complete symphony on I.G.Farben I humbly hope, the Gods may grant me the favor that it might become, as one of my friends among the defense counsel styled it, an "unfinished symphony".

The Prosecution gives a picture of I.G.Farben black in black pretending it to be an overall-canvas. This picture is false for a double reason; not only does the Prosecution present as black, points, which are in fact white. Apart from this it leaves unmentioned numerous white points which lie inbetween. I shall now attempt to draw the true picture of Farben as I see it. Naturally, although this task has been assigned to me by my colleagues and the defendants, this will be a picture as viewed by me personally, and none of the other defense counsel and defendants share any responsibility in or are they bound by the manner in which I shall present the facts.

has
Our age/frequently been styled the area of chemistry. I do not know whether this characterization will outlive our age. Nowadays life goes at a rapid pace. Maybe in times to come our age will be called that of world wars or of the atom bomb or of atomic power,

or are we living already in the area following that of chemistry? In any case, however, the impetuous development through which mankind has passed in the last hundred years must be attributed to a great if not decisive extent to chemistry. It is my belief that mankind will gradually have to turn from the exploitation of limited, irrecoverable matter extracted from natural resources to the utilization of everlasting and inexhaustible natural powers. In the last resort this will mean liberation from the dependency on matter in which we still are entangled. Only then man will be the master of the world whereas nowadays he is its slave. Along this line it is important as a relief- and transitory solution to economize in matter which cannot be regenerated, to replace it by other substances which are of more plentiful occurrence and to utilize more thoroughly. The researcher goes along this trail, and it was this trail and no other which led Farben to all its great pioneer achievements: dyestuffs, the synthesis of nitrogen from the air, the methanol synthesis, the artificial fibres, the light metals, bauxite, the plastics, the process of refining coal as a source of power by means of the gasoline- and lubricant synthesis, numerous chemiotherapeutic agents of vital importance, all the pioneer achievements of which I attempted to give a survey in the basic information. In this respect indeed Farben had set-up a kind of a slave labor program being the only one it ever had during the whole time of its existence; the program of penetrating the secrets of nature, of wresting these secrets from nature, of making physical agents in an ever increasing degree the servant of man, thus

contributing to his liberation from material, to his progress, his well-being, and his dignity, just as it is described so superbly by your fellow-countryman David E. Lilienthal in Chapter III, (page 29) of his wonderful and exciting book on the Tennessee-Valley-Authority which I obtained a short while ago and which I read with enthusiasm as if it were a revelation. There he describes how a kilowatt-hour of electricity is a modern slave that toils untiringly for mankind.

Your Honors may be startled. Is it not the Prosecution who refer to these very pioneer achievements in order to charge Farben with having planned and prepared a war or even an aggressive war? In reply to this I wish to state first of all that there is nothing which man cannot abuse. Every industrial achievement will also be useful in war, it even may be abused for an aggressive war. Technical scientific and industrial developments just stormed ahead during the last century. In no field - as we must admit with terror and shame - was this development used for peaceful purposes only, but everywhere also for destructive purposes harmful to mankind. It is a fact, after all, that industry and technology are man's servants and instruments which he may utilize to make them either a blessing or a curse. The instrument is innocent; man's mind alone decides. And however pure may have been the heart of an ingenious pioneer, no instrument:

is proof against being used also by evil men for the doom of mankind. Is it not the same problem which we face in regard to atomic energy? Is the use of an atom bomb a blessing or a curse of mankind? I do not dare to decide. The only thing I know is that the utilization of atomic energy for peaceful purposes would be the most unheard-of progress of mankind along the path towards liberation from dependency on matter, towards making use of natural powers. Should the scientists who have worked and are still working on the development of atomic energy give up their work because of its utilization in atomic bombing with all its horrible consequences? I think, they should not.

It is the same question which the great German physicist, the Nobel Prize winner Max Planck, who died recently, raised in his famous discourse on the purpose and bounds of the exact sciences which because of an unsatiable demand he had to hold again and again over a number of years. I heard this discourse during the war in Berlin, and it has remained one of my most lasting impressions. Planck likewise pointed to the incessant and universally threatening abuse for destruction, for war purposes, of the results and advancements of scientific research. He likewise put the question whether as a human being the scientist can accept the responsibility of continuing to create such instruments of destruction, and he finally answered the question in the affirmative, imbued by the confidence and faith that in the end all these advancements must

turn out to be a blessing to mankind in that it will learn and grow a moral stature enabling it to use these instruments for peaceful purposes and for its blessing.

Now chemistry is a typical industry of basic materials. Most of its products can be used for peace as well as for war. This has been shown in the course of this trial in numerous instances and the treatise on Farben's pioneer achievements also bears this out in a rather emphatic manner although this summary which I submitted along with the basic information was not composed from this particular angle at all.

May I remind Your Honors that I showed, when presenting the basic information, that of the three Nobel prizes awarded to Farben scientists for work carried out for or utilized by Farben, two were given for inventions on which the Prosecution based their argument concerning preparation for an aggressive war, i.e., the synthesis of nitrogen and gasoline; and that of the nine grand prix which Farben products were awarded in 1937 at the Paris World Exhibition, three were given for inventions and products which, in the opinion of the Prosecution, prove Farben's preparation for aggressive warfare, were decisive factors in German rearmament and were important only in this respect, i.e., our synthesis rubber buna, our light metal alloy hydronalium and once again synthetic gasoline. Nothing shows more clearly the peace-time importance of these products and processes

then the way in which the whole world saw them, not as military instruments but as mile-stones of peaceful progress. Nobody could seriously maintain that the heads of the Paris World Exhibition in 1937 wished to reward German rearmament with their Grand Prix.

That were in the opinion of the Prosecution the aims and activities of I.C. Farben ? We have heard it here and we have no doubt that we again will hear it tomorrow. I quote from the opening statement which General Taylor made here on the 27th of August 1947 : -

"..... to turn the German nation into a military machine and build it into an engine of destruction so terrifyingly formidable that Germany could, by brutal threats and if necessary by war, impose her will and her dominion on Europe, and, later, on other nations beyond the seas. In this arrogant and extremely criminal adventure, the defendants were eager and leading participants. They joined in stamping out the flame of liberty, and insubjecting the German people to the monstrous, grinding tyranny of the Third Reich, whose purpose it was to brutalize the nation and fill the people with hate. They marshalled their imperial resources and focussed their very formidable talents to forge the weapons and other implements of conquest which spread the German terror. They were the warp and woof of the dark mantle of death that settled over Europe..... These are men who stopped at nothing.

they were the magicians who made the phantasias
of "Mein Kampf" come true."

End quote.

I cannot give you a complete picture of all the products and achievements of Farben but let me quote a selection of them : there are the dyestuffs from coal which have just been mentioned as a pioneer achievement, to which, above all, we owe the delightful variety of colors in our present world and which gave the enterprise its name, among them the world-famed Indanthrene-dyes which are sun- and rain-proof.

There are the numerous pharmaceutical products marked with the "Bayer-Cross" which contribute towards the health of mankind, among them the world-famed sisters Pyramidon and Aspirin. I give you Germanin, the conqueror of sleeping sickness, Atebrin and Plasmochin, the conqueror of malaria, the Salvarsanes, the conqueror of syphilis, Fudrin, the conqueror of the Egyptian worm sickness Bilharzia, Vigantol, the conqueror of rachitis. I give you the sulfamylamides, our Prontosil, Tibatin and Marfanil for the discovery of which one of the discoverers, Professor Domagk of Elberfeld, was honored with the Nobel prize and which initiated and up to this very day are mile-stones of a new epoch in the combat of numerous malignant diseases. I give you Dolantin and Lidon, the conqueror of pain. I give you the numerous products of veterinary medicine, the sera and vaccines and also the diphtheria-serum associated with the name Emil von Behring which has saved the lives of numerous children and made their parents happy. Last not least I give you the numerous dental products bearing the Bayer-Cross and the many plant protection agents with which the farmer, the gardener, the vine and fruit grower wage war against the pests which threaten his products.

Let me put in here a personal experience. I am a passionate alpinist and friends of mine have been on expeditions into most of the high mountain ranges of the world, including the Himalaya and the Andes and Cordilleras in South America. Laughingly they told me, a Farben man, how, on climbing down from the lofty peaks into the valleys again, they had found everywhere the Bayer-Cross, the first sign of the civilization to which they had returned. In their experience, throughout the entire world, as they put it, on leaving human civilization one left behind the Bayer-Cross and at its first sight one re-entered its domain.

I turn now to the synthesis of nitrogen from air which meant and will mean throughout the future, fertilization and thus bread for new millions of people even if Farben and Germany should not be permitted to continue to produce fertilizer nitrogen by the process which it mastered for mankind. There is the synthesis of gasoline, more generally speaking of fuel and lubricants, from coal and other substances which constitutes a refinement and a more manifold utilization of the earth's slowly but surely diminishing coal supplies. I give you artificial silk and Vistra, our spun rayon, chronologically the first spun rayon in the world, clothing for millions of people. I present the light metals, aluminum and our magnesium-aluminum alloys, electron and hydronalium which possess some wonderful

and striking qualities and which enrich and facilitate modern vehicle and aeroplane construction and also the building industry in which as for example in the U.S.A., light metals are used to a far greater extent than anywhere else in the world. Nothing could be more false than the opinion that has also been voiced by the Prosecution that light metals were a typical and exclusive war-time product, just as it is impossible to see why, considering the impetuous development of civil and commercial aviation, every furtherance of aeroplane construction in Germany should be considered preparation for war. There is the newly discovered wonderland of plastics with its extremely manifold and adaptable qualities and potential applications. There is the film which you all know and which is as well known throughout the world as it is widely spread, the Agfa-Film, which has given you pleasure in the theatre and in a similar manner as amateur photographers or even as amateur cine-photographers with eight mm film and your own movie-camera. A sector of this is the Agfa-Colorfilm which is still manufactured nowadays in our - or I ought to say in our former - Wolfen-Film factory and which has opened up a new epoch of films and simultaneously a new epoch of artistic treat, of recreation and relaxation. Over a year ago now it again achieved a great success, even although it did not appear under its own name when the Russians used it for their color film "the Stone Flower" and with it gained the prize for the best color film in the film contest at Cannes, whereupon the Russians' phenomenal progress in the field of color films was deservedly praised throughout the entire world.

Again I may recall the great joy of my Himalaya and Andes comrades when they discovered that their Agfa-color pictures reproduced the landscape exactly as it has actually been, and our own pleasure at being able to see at least true-to-life pictures of those mountains for which we long. I may quote the numerous products for plant protection and the insecticides, the fire-protection agents which master the fire, being the scourge of mankind, Sulan which vanquishes an other plague of mankind, the moth, and Igepone, the detergents which has revolutionized all washing methods. Furthermore, I may adduce our synthetic buna with its adaptable qualities and in this very adaptability so far superior to natural rubber. In addition I may quote synthetic precious stones, magnificent rubies, sapphires, and others, where we have succeeded in reproducing nature's creative process only concentrated into a far, far shorter period than that required by nature, and which are just as indispensable as bearing-stones for precision instruments as they bring us pleasure when used as jewelry. I may quote Wofatites for the treatment of water, the further development of which by Farben brought about, among others, the solution of the problem of making sea-water potable and thus overcome one of the most torturing and most horrible forms of death, death from thirst of castaways at sea. I may quote furthermore the entirely synthetic Fe-Ce-fibres and Perlon fibres, known to you as Nylon fibres, and also Perfoltape and Perfofoil, which throw over board all previous concepts of durability and sensitivity to acid, in fact all resistance to wear and tear for fibres and foils.

I may adduce the cellophane, known to every child in the world with its practically almost unlimited uses such as packing, sealing, binding, and textile materials. Finally I may recall with regret our friend Otto SCHARF, who died during the world war and who revolutionized Europe's lignite mining methods by most thorough and extensive mechanization during the war, and whose favorite machine, a gigantic excavator allegedly the largest in the world, in the meantime left our pits in Central-Germany and has gone East, the way of all valuable materials. All these, Your Honors, are the products and achievements of Farben styled a firm of war criminals. I think that here another quotation from General Taylor's opening statement would be more suitable, namely "that God gave us this earth to be cultivated as a garden." To this Farben has contributed to the best of its abilities.

And all of these products were of the best quality. It was the principle and in the last resort the secret of Farben's tremendous business success to supply the market only with first class, thoroughly tested and reliable products. In addition, there was a comprehensive and careful system of advising customers on the use of Farben's products, based on the experience that the customer can only utilize goods to the full and be completely satisfied with the goods and business-connections if he makes no mistakes in using them and does not suffer set-backs by false application, but exploits all the potentialities of the products.

On the basis of similar considerations, we frequently entered into a mutual exchange of experiences with the firms engaged in a further processing of our products and in technically complicated fields of production even joined the manufacturers of finished products in order to exploit all the potentialities of our products and to gain knowledge from that further processing for the greater improvement of our own products. And Farben gave these products and achievements to the whole world. In this trial it has often been discussed and I myself have tried to indicate again in a summarized form in the basic information how Farben made deliveries to the whole world, just as Farben's field was the whole world. I should like to remind Your Honors briefly of the figures given in the basic information for the proportions of our foreign sales every year up to 1933, altogether 50 to over 57 %, for dyes 72 to 77 %, for pharmaceuticals 85 to almost 79 %.

But Farben did not only supply mankind the world all over with their goods but also attempted to promote economic development and industrialization of less advanced production fields bearing in mind that in the last resort this was not at the expense of our own business but that in a normal and reasonable world the most comprehensive and valuable exchange of goods can take place only between highly developed and highly industrialized economic areas. These achievements were made possible last not least by the harmonious cooperation and correlated work of our production plants and also, above all, of our

research labs the result of which was an eminent enrichment on a mutual basis of working and research fields which by their nature were entirely different from one another. It was an alliance of research, science, technology and true enterprise, typical of Farben and the only one that Farben concluded and not, as the Prosecution maintains, an alliance with Hitler.

Chemical research deserves a special praise. It is the very nerve of modern industrial chemistry and its law of life. Woe, if it deserts it! It would perish in consequence thereof, gradually but irresistibly and who ever would take away from chemical industry this nerve, would chain it, would strangle it with open eyes and deliberately. In modern chemistry today's big business in most cases is no more big business in ten or twenty years since in the meantime the pioneer achievements have become common knowledge. Today's research is big business in ten years and therefore it is the law of life of this chemistry just as it was the law of life of Farben to finance from today's income the research of today and hereby simultaneously the business of tomorrow. Farben had recognized this vital law, had acted accordingly and in this way served the progress of mankind. In this connection I would ask Your Honors to bear in mind the expenditure for research work as shown in the basic information when I presented the survey of the utilization of the entire profits of Farben. Eighty million, hundred million, hundred-sixty million Reichsmark annually, these were the figures of Farben's expenses for research purposes, amounting to five percent, seven percent, ten percent, and once even thirteen percent of the annual overall expenses. How poor

when contrasted herewith appear Farben's contributions of a purely political character on which the Prosecution based their assumption of an alliance ^{of Farben} with Hitler and which I also showed as part of said survey, being only 800.000.-, 600.000.-, 200.000.- Reichsmark annually, that is only 0.03 percent and in the end 0.006 percent of the overall expenses!

And what was the result of this indefatigable research? I cannot style it better than by the very words of General Taylor in his opening statement:

"In the laboratories of Farben many amazing experiments were being carried to successful conclusions. New inventions and processes poured forth in a never-ending stream; most of them were of inestimable actual and potential value to mankind."

End quote.

Great therefore was the value of our patents which numbered around 40.000, of our processes and data, indeed of the status of our scientific research as a whole. We therefore felt particularly concerned when in the course of the past three years it was repeatedly reported from U.S.A. and England as well as from Russia that German industrial patents and processes constituted the greatest war-booty of all times, a booty of inestimable value that would save the industries of the victor nations ten years of research, experiments, endeavors, expenses and set-backs, and that these patents and processes were more valuable than any conceivable reparations from dismantling factories or from current production. We knew when we heard this that Farben was to a large extent affected hereby. You will understand

that we perceived with sorrowful pride and proud sorrow.

Farben allowed the whole world to participate even in these riches: the stream of inventions did not only pour forth, it also flowed all over the world. Farben did not keep in secrecy its inventions but let the whole world share them. Year after year thousands of patents were granted to Farben and year after year thousands of patents found their way into the world. Among the approximately 40,000 patents there were 30,000 granted in countries outside Germany. Friendly agreements on licenses and exchange of know-how were concluded in a fair manner and to everybody's satisfaction with firms of other countries and thus the technical progress of all partners to such agreements was furthered to a considerable degree. As has been already discussed in this trial, this went even so far that during the war this promotion of technical development in foreign countries was unexpectedly turned against Germany and Farben itself.

But Farben did not only carry on its own research work, it also sponsored on a large scale and in a magnanimous way the purely scientific research work of universities, academies and other institutes by donations and exchange of experiences without claiming any binding agreements nor equivalents, as was repeatedly shown in the course of this trial. Farben shared the responsibility of free research and science and felt itself its confederate even without deriving therefrom any direct advantage.

The business principles of Farben can be summed up in the simple formula

that the only really good and profitable transactions are those by which both parties are fully satisfied. It was the trend of thought of the honorable merchant to whom fairness and honest consideration of the interests of both parties is the supreme commandment of a deal, who knows from both decency and wisdom that in transacting business always thought should be given to future transactions with the same partner, who knows that only continuously good business connections really pay, that on the other hand one single transaction however profitable it may be in itself can never be valuable if no other succeed it. Your Honors will perhaps raise the question whether Farben was a philanthropic undertaking, a moral welfare society. Indeed it was not. It was a commercial enterprise but it knew that ethics and true reason which is farsighted and does not short-sightedly see only the advantages of the next quarter of an hour are usually identical.

During my own career with Farben, I heard nothing more frequently from men of whom the majority are now in the dock - not as orders from superiors, but as advice from fatherly friends - than such maxims and precepts as the following: character is more important than all intelligence - decency - fairness - too the line - Farben doesn't do that sort of thing - that is not Farben's style. I am and will always be glad and proud of having enjoyed with some of these men a relationship as friendly as can ever exist between people of such different ages and positions. It was indeed, cooperation

not between older, powerful industrial lords and their younger subordinates, but between free men who cherished confidence in and friendship for each other.

Farben's exemplary social institutions and their outstanding achievements in this field were known throughout the world. What Farben did for its workers and employees in providing fair wages and other emoluments, really commensurate with achievements, conditions and justified claims, in providing sick and old age benefit for its staff, factory dwellings and estates, facilities for the recreation of their workers and employees, could, in itself, fill a whole book. Much of this has been indicated in this trial and also in the basic information and in the pleas made by some of my associate defense counsel. I do not wish to go into details here, for at this point it is difficult to decide where to begin and where to end, if any mention of it is to be made at all. I only may respectfully remind Your Honors of the following figures mentioned in my basic information: the expenses for voluntary contributions to social welfare alone in different years amounted to 35, 64, 108, 148, and in the end to 190 million Reichsmark equalling 4, 5, and finally 7 percent of the annual overall expenses.

The factories themselves were as fine and the working conditions therein as good as such factories and conditions could ever be. The instruction of apprentices and the training of juveniles in the famous apprentices' workshops of the great Farben plants were known to be exemplary. The principle was to make really capable workers

out of these juveniles and thus give them for their life the best that can possibly be given to young people.

Naturally I do not wish to say that everything was perfect. No limits are set endeavors to attain perfection, and it can be of course asserted, even of Farben, that more could have been done in this direction. But there were men in Farben -and they had set their heart on it and also could make their voices heard- who still urged things on along this line. Just as when dealing with its business partners, the management of Farben in handling the affairs of its staff had found out the principle and followed it in practice that enterprise and staff belong together and that there is a synthesis on a higher level for their apparent differences of opinion. Farben actually succeeded in bridging the tragic conflict between capital and human labor which has darkened our lives ever since the industrial revolution of the world, to an extent unequalled by anybody anywhere else; in fact, Farben came very close to solving the problem altogether. Every worker employed by Farben felt himself to be a human being and a valuable individual.

Again I hear the question -and it was put to me once by the Russians, who accepted my explanations to this effect with scorn and sarcasm and the conviction that I was caught lying- the question whether I wish to maintain that Farben had been

a philanthropic organization and an institute for the promotion of human happiness. But once again I can reply quietly in full earnest and with utmost confidence that of course Farben was not, but that this was once again one of the points where foresight and reason matched so that on this higher level the apparently irreconcilable antagonism comes to nothing.

If Your Honors bear in mind this model and socially minded attitude characteristic of Farben towards its staff, imbued by a high-levelled moral sense, as well as the absence of any narrow and arrogant spirit of nationalism as it appeared clearly in the course of this trial and which as well was a characteristic of Farben, would that not lead you to the conclusion that it would be in opposition to all experiences of life and that it would run counter to all psychological probability if Farben should suddenly adopt towards its foreign workers and concentration camp inmates employed in its plants the attitude of a cold and ruthless exploiter? In addition the officials of Farben should not be considered so stupid as to have meted out ill-treatment and provided insufficient food to their workers on whom in the last resort production depends. For it is obvious that satisfactory productivity can only be expected from willing workers.

from persons who are adequately nourished and decently treated. Does not the most convincing proof of all this lie in the fact that practically no cases of sabotage occurred in the Farben plants in spite of the large mass of foreign workers and the considerable number of concentration camp inmates in the one case of Auschwitz.

Farben still was and remained a pioneer and advocate of international understanding and peaceful, fair competition which was not particularly interested in giving the world just Farben goods or German goods or American goods, but the best goods. Is this not in the last resort the idea and moral justification of free competition, a principle which your country more than any other so decisively depends on. Give man the best goods available everywhere - that seems to me to be a good slogan for a peaceful, new and better world of wealth, civilization and human dignity.

In our opinion it is not in opposition to this attitude if Farben participated in voluntary international agreements, to ensure market regulations which according to the experience and practice of European economies are in the interests of all concerned, and in many instances indispensable. If correctly established and handled, they are in the light of this experience wonderful instruments for the promotion of voluntary peaceful negotiations among the nations.

Your Honors will have heard whilst listening to the arguments of my associate Dr. Felckmann, in which in my opinion were most interesting and elaborate, how these agreements as a matter of principle were recognized and adopted as instruments of economic reason in international bodies of post-war times in cooperation with U.S.A.

Economic reason - a building-stone for a world which we all have in our minds and know, and in which we all do not live so far although we should like to live in it, the world of freedom of the human being, of the individual personality, of the value and dignity of the individual. In Germany, Farben was an outstanding pillar and ardent champion of this world. The battle which went on without a break and amidst of which we felt ourselves placed, had as its issue - among others - the subjection of the industry and of Farben in particular as its most outstanding pillar to the totalitarian national socialist regime. It had as its aim the totalitarianisation of economy thus to give it a political character; on the other hand, it was a struggle for the preservation of enterprise, of a bold economy directed by economic reason, non-political, and going beyond state- and national boundaries. Economic reason - political power: these are the two slogans to which this difference of ideology can be reduced. Economic reason however was just one basic principle and one more vital law of Farben.

Due to the fact that it always upheld this principle of economic reason Farben succeeded, I believe, through gradual development without repercussions and almost imperceptibly in growing

a new type of enterprise which at least showed the direction and contributed to the solution of another problem which to many of us appears to be the fateful question of our age and in which ideological differences in most instances are considered from the very outset to be irreconcilable: the problem of socialism - capitalism. I believe, Farben had succeeded - in any case it had progressed far in that direction - in finding building-stones for a synthesis closing this gulf which - it seemed - nothing could bridge over. By its very existence, by its outstanding achievements in the field of both industrial production and social welfare, by the ideal relationship existing between management and staff, Farben refuted in a conclusive manner the theories of capitalist exploitation of labor, of the enslavement of the proletariat, of the everlasting enmity between employer and worker. Again I am in the lucky position to refer to Lilienthal's book on the Tennessee Valley Authority. Lilienthal writes at the beginning to the foreword to his book: "It is my purpose to show, based on America's actual experience in one field that such new places of work, factories and prosperous farms, can be created without there being a need for us to choose between the extremes of the 'right' and of the 'left', between an over-centralized, all-powerful government and a policy of laissez-faire, between 'private industry' and 'socialism' or between arrogant state bureaucracy and the predominance of a few private monopolies." End quote.

As this is one of the questions which has occupied my mind day and night for years, and in regard to which I have in all consciousness and with extreme tension and excitement followed Farben's development to which I just referred, Your Honors will understand to which degree it impressed me to read these words and that for me they meant a confirmation of my conviction that seen and dealt with in the light of full reason, this question indeed became meaningless and that in respect of important objects it had already partly become so in the world.

To me it appears relatively unimportant what name is given to it, neither the name capitalism nor that of socialism seem suitable to me nor would they be much to the point. Maybe it would be most appropriate to speak of a system of enterprise conscious of its social duties, of a true spirit of enterprise, however pledged to social responsibility to whom it is a natural and heart-felt necessity to grant to the staff a reasonable part in questions of directing the enterprise. In the last resort this, as with most things, is a question where men and personalities are the decisive factor. Which system places at the head of enterprises the true entrepreneurs, inwardly pledged to social responsibility who recognize and realize to the full the value of each individual worker as an associate, and his human dignity? I would invite Your Honors to take into consideration the career of these men who are in this dock. Through their ability and the power of their personality without connections and sponsorship of any kind, the majority of them came into the Farben management, rising from ordinary small beginnings.

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It is true, indeed, that an enterprise which raised so many men from the nameless masses to leadership in this field has stood its test. This state of affairs indeed meant: "a

clear course for the efficient man".

Farben didn't belong to the 23 defendants, and

had at all ceased to belong to any individual persons or groups but had become the property of the general public, it had been socialized in a natural way without compulsion.

Farben however became not the property of the state nor of human society generally, which for the most part has neither the talent nor the desire to develop any reasonable business activities. Farben had become rather the property of that portion of human society which was qualified and prepared for it, in other words, simply of such people who deemed it right and had decided to invest their money in Farben shares. Farben had become the enterprise per se. May I remind Your Honors of the diagram which I submitted as part of the basic information showing how the annual total proceeds were used.

The profits distributed to the shareholders were relatively small. Fixed, of course, but by comparison with the unusual importance of their functions and their achievements the emoluments of the administration were still smaller. Time and again the profits were ploughed back into the business in compliance with the vital law of chemical industry, and consequently also of Farben, to carry on research work all the time, never to be satisfied with what had been achieved, to strive in tireless endeavor and to push on along the path of human progress, keeping the alliance typical for Farben between science, technology and the spirit of enterprise.

and time and again the profits were spent for the benefit of the staff or to apply a frequently used phrase, the social benefit was increased, provisions were made for the people who worked for the business, capital and labor, machines and men were thus in a harmonious and blessed union.

In order to fully clarify this, I propose to deal now shortly with the history of Farben's origin. It originated in 1925 from a merger of six leading chemical enterprises. This merger did not come about in an arbitrary way nor was it initiated by industrial lords, thirsty of power as it is nowadays voiced in the public for obvious reasons. Farben did not emerge from any capitalistic considerations of a craving for power but grew together in an organic way under the necessity of a better regulation and reasonable distribution of working fields within their scope of production, driven along irresistibly by economic reasons even in face of an opposition arising from the understandable and partly ardent endeavor of the founder-firms to preserve their independence. This merger did not imply as it is believed nowadays frequently and purposely taken for granted for the owners and managers of these enterprises a concentration of power on a gigantic scale, but on the contrary, it entailed the abandonment of their own powerful position held so far by them within the founder-firms. Although all this appears to me to be sufficiently clear after having given due consideration to the facts, in dealing with this problem

I have met time and again with such a great amount of surprise and scepticism that I deem it necessary to explain these facts shortly. I would invite Your Honors to take as an example, in order to facilitate the matter as much as possible, five companies of an equal size with a stock capital of 100 million shares each in which two major shareholders participate to the extent of 50%, i.e., 50 million each. In each of these five enterprises both of the respective shareholders alone have the decisive influence due to their participation of 50% each, together 100%. Now these five companies merge into a single one; on the basis of the equal size and value of the five companies, the rate of conversion of the old shares into shares of the new company is 1 : 1. Accordingly, the new company has the same stock capital as the five companies taken together, namely, 500 million. Of these 500 million each of the previous ten shareholder is allocated his 50 million. Each of them participates therefore in the new company to the extent of 50 million equalling 10% of the stock, therefore, owns a relatively small minority. In the new enterprise none of them has a decisive influence, nobody controls the other, each of them has abandoned his previous governing position.

This was precisely what happened when the big six of German chemical industry merged into I.G. Farben. Therefore the establishment of Farben is the only major example known to me of a voluntary abandonment of power due to considerations of a higher order. Is this not the underlying

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problem amon of disarmament, control of atomic energy, establishment of a world's government which we will have to solve in the near future lest mankind should not perish and our globe not be blown up to pieces by the forces unchained through the tempestuous development of our technical age. The renunciation of sovereignty by the individual states, that is the difficulty which this necessary development has to cope with and which, in my opinion, is the price to be paid for the future of mankind. Farben, the Vorstand members of which are indicted as war criminals, has demonstrated to the world this matter of cardinal importance twenty-three years ago, without making a great fuss about it, because these men had realized and had the energy to see to it that what was reasonable and necessary was done even at the expense of a painful price. In particular it were two men of a really outstanding character who had both the intelligence and determination to carry out the necessary measures in the face of opposite feelings both in their minds and those of the others. Carl Duisberg and Carl Bosch, both men who have become known also to Your Honors in the course of this trial and who alone on account of the power and trustworthiness of their personality guarantee that the establishment of Farben was not motivated by mean and greedy instincts of a craving for power, but were the result of human intelligence and reasoning of a high order, a true work of peace.

Hand in hand with the expansion in subsequent years and the corresponding increase of Farben's capital, the splitting-up and dispersion of stock ownership increased more and more.

Farben had attained such proportions that it no longer could be upheld by individuals but only by the nation as a whole. Expressed in terms of percentage, there were in the end no more large stockholders. Inquiries made during the war have revealed that the bulk of Farben's stock was widely scattered in amounts of a few thousand marks each. The biggest stockholders proved to be the Belgian chemical firm of Solvay, and the three French mother-companies of Francolor. But even their 12 3/4 million equaled no more than 1.5% of the stock capital. It is an unusual joke and almost a good joke, though to I.G. it is made bitter by this indictment, that its largest or second largest stockholders were precisely those French chemical firms which I.G. is supposed to have robbed and spoliated by means of the Francolor-transaction. Yet, amounts of that magnitude were the exception. On the other hand there was hardly anyone engaged in an enterprise, be it ever so small, any craftsmen or pensioner who would not have owned his Farben shares and been proud and happy thus to feel that he was connected with this enterprise.

This picture would be incomplete if I failed to mention the provisions which the administration of Farben made all the time to protect the small stockholder. In every stock-transaction special attention was paid to complying with the justified interests and expectations of the small stockholders and taking care of them.

This too - and for the third time I have the opportunity to stress this point - was not the attitude of a special welfare institution, but again the synchronization of decency, reason and far-sighted self-interest resulted from the realization that the enterprise and the stockholder are to a great extent identical, and that only a relationship between the administration and the stockholder, based on confidence, can justify a state of affairs from which the stockholder will derive pleasure, and in his turn will also be available should the administration at a time when money is needed or for some other reason require his assistance.

Such a high degree of human development as had been reached by Farben was in keeping with the organization of the top-management, as has been already proved in the course of this trial. There was no autocratic governing top-body, neither in the organization as a whole nor even in the administration, but a truly democratic decentralization, which gave full opportunity for development and activities of individual personalities, according to the principle which stood its test in Farben at all times and which it cultivated and adopted at all times: "Men, not measures".

May I digress for a moment and change the subject. I am thinking of our administration building in Frankfurt on Main, the master work of Hans Poelzig, the great German architect who could no longer work and live in national-socialist Germany and who died in emigration. If I am informed correctly there was but one single occasion in his life when, with unlimited

means at his disposal and without restricting orders from the proprietor, he could draw from the riches of his genius to his heart's desire - for our house at Frankfort. This house and the entire concept of its lay-out gives expression of the spirit of the world. It is so full of light and so beautiful; it has such a charm of line and elegance; it is so refined in its proportions and in the dignified simplicity of its furnishings; everything is so harmoniously fitted into the landscape that the magnitude, strength and power which it undoubtedly has, seem to be faded completely into the background. The spirit of this house is that of refinement, of elementary power and that, as I have already tried to show at the outset, is the principal task and spirit of modern chemistry, and thus of Farben. Look at this house meditatively and with a willing heart and you will detect more of Farben's spirit therein than in documents however numerous and detached from their context.

Small wonder therefore that also the staff were attached to the enterprise by an almost proverbial fidelity, that they had realized that they belonged together and accordingly felt themselves to be a part of Farben. If Your Honors would go to our big plants to Ludwigshafen, to Hoechst, to Leverkusen - to single out only a few- you would hear the pride and joy and devotedness with which our old foremen and permanent workers speak of Farben. Then you will know what Farben was.

This fidelity of its staff was in keeping with the international respect which Farben enjoyed throughout the world because of its achievements and its fair business methods. I still remember well the happy experiences I had during business trips abroad because of this high and heart-felt esteem expressed by distinguished men.

In their Preliminary Memorandum Brief the Prosecution speak of Farben's craving to conquer and subjugate others, of its unassailable policy of aggrandizement, of its constant aim to enlarge its realm, its empire. Now, in this trial conclusive proof has been offered, bearing out cases in which Farben deliberately refused right at the outset an important and attractive expansion offered to it. And more than that: as shown in this trial, Farben not only refused to expand but on the contrary wished to reduce the concern drastically, being concerned about having grown too big. It was intended to realize this scheme by issuing convertible bonds, granting the possibility of obtaining shares in affiliated companies. This transaction, in the planning of which I myself participated to a substantial degree and with ardent interest, would have entailed, if carried through to the full, a reduction of Farben's stock by 500 million Reichsmarks on the basis of a stock of 1.4 billion existing at that time as shown in the basic information. The planning of this transaction including all necessary governmental approval was completed by the second half of 1944 ready to be started at any time. This indeed proves that these men who today are in the dock did not crave for power, but lived up to the reason and self-conquest which had sponsored the establishment of Farben in 1925.

Although, as I pointed out already at the outset of my argument, I do not propose to deal with the different counts of the indictment, I still think it to be my task to show some of the incriminations of the Prosecution

against the background of the conclusions to be drawn from the basic information submitted by the Defense. In doing so I would avoid repetitions as far as I have already touched in my statement on certain points of the basic information. I shall not proceed in the consecutive order of the indictment but in accordance with the set-up of the basic information.

The Prosecution speak of the immense profit which Farben tried to obtain and which for a certain time it realized by entering into an alliance with Hitler. I shall confine myself to the observation that figures on gross earnings prove nothing at all about the real profit, but, however high they may be, they might just as well involve a loss, that is, if the depreciation of profit and the expenses are still higher than the gross profit.

Your Honors will know yourselves that little is said about the financial situation of a man, if it is known that he has an income of thousand dollars. One must still know what expenditures and obligations he must meet with this sum of thousand dollars. If you consider the net profit shown in the balance-sheet figures submitted with the basic information, you will see that the net profit, in its trend of development, lagged behind the capital and business expansion enforced by the war. But however that may be, here these men are accused, and in these instances the data of the various defendants and the examination of the use made of the profit in the basic information have shown with ample clarity and emphasis

that these men had derived no advantage or personal enrichment from this business expansion, but that their incomes remained on a scale of incredible modesty and consequently continuously dropped both as to their total amount as well as to their percentage. Whatever the defendants might be reproached with: they never craved for personal enrichment and never were given it.

The Prosecution based its charge of an alliance of Farben with Hitler, among other reasons, on the allegedly enormous contributions of Farben to national-socialism. The figures appearing in the basic information and dealing with the utilization of the total profit have put these amounts in relation to the proportions of Farben showing how ridiculously, and I would even say provocatively unimportant these political contributions of I.G. were, when measured by its standard. not wishing to bother Your Honors at the moment with figures. I would only invite Your Honors to take once more notice of these figures by turning your attention to document book No. II of the basic information and to my introductory remarks thereto which I submitted on May 7, 1948.

The Prosecution maintain that Farben had participated in the preparation to a war. In the basic information I showed that the foreign business of I.G. including the nitrogen business, before the Nazis came to power, equalled 50 to 57 % of the total Farben business and in some of the sparten even up to 77 respectively 79 %, and that after the inner-market expansion which took place in the Third Reich and which as a matter of course resulted in a reduction of the percentage of the stubbornly maintained share of Farben's foreign business in the total turnover, said share still amounted to

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43 %, in the Sparten which exported most even to 50, 68, and 70 %. I may refer furthermore to the world-map with the turnover columns and the foreign agencies of Farben. In the last place I would remind Your Honors how the particular intensity of Farben's export program showed up at each comparison, I drew in this respect : I think of the comparison which I drew with the remaining German industry, the remaining German chemical industry, with the scope of world's trading in chemical products and the size of business of five other world firms.

And now I would ask you to put the question always raised by criminalists, the question about the motives : what were Farben's reasons for wanting a war ? How could war benefit Farben ? It could expect nothing but trouble and destruction of its very life and activities.

An enterprise, the very basis of which was world's trade could neither be interested in nor wish a state governed by the principles of autarky nor a policy of violence nor any war at all. The only thing it could be interested in was international cooperation, peace and once more peace. Farben's business was flourishing and because of its outstanding output and products it could be confident of always being one of the leading enterprises in peaceful competition and of making good and solid profits. These men who headed I.G., Farben knew the world. They knew that Germany is poor in raw materials and food stuffs and, therefore, would be bound to lose a war in the long run, that in fact Germany had lost the first world war for these very reasons. They also knew world industry and particularly that of the United States

and they realized to what an extent this industry could be expanded. They knew the sales organization of Farben distributed all over the world. In the event of a war these organizations would have been completely unprotected. Here it was all the more certain that all this would be destroyed during a war, just as it had been in the first world war. One really cannot conceive of these men wishing to risk everything, they had built up during long years of strenuous work. Through the first world war Farben's firms had lost all their patents to foreign competitors and one really cannot assume that they wanted to take this risk again. Now in this respect, Farben really ought to be a burnt child that dreads fire. I do not wish here to enlarge upon the high morals and the sincere love of peace of these men, but nobody has ever doubted their being intelligent business men of worldwide experiences, yet, these same men are supposed to have been such simpletons and fools as to want war?

The Prosecution styles the organization of Farben abroad a network of political espionage and propaganda activities. The basic information again contributes to showing the utter absurdity of this theory by analysing the business of Farben abroad. All countries of the world were important markets for

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Farben, for this reason the sales organization especially of the Sparten dyestuffs, pharmaceutical, and photographic material which exported more than other Sparten was set-up, for this reason the market observation and reports were introduced. Under these circumstances this was only natural and a necessity, and no enterprise of such a world-wide scope can do without it, if it does not wish to prove its incapability.

I shall turn now to the charges of planning and preparing an aggressive war. The theory presented by the Prosecution is not homogeneous. Its theory ^{number} (1) is voiced in the opening statement which General Taylor held in this trial. I quote:

"They (namely the defendants) were the builders of the Wehrmacht..... They knew every detail of the intricate and enormous engine of warfare and watched its growth with an architect's pride. They knew that the engine was going to be used, and they planned to use it themselves. Europe was dotted with mines and factories which they coveted and for each step in the march of conquest there was a program of industrial plunder which was put into prompt and ruthless execution. These were the men who made war possible, and they did it because they wanted to conquer."

End quote.

And even in a more precise form we have heard this theory in the course of the well-known press interview which the Prosecution held on the day when the indictment was served, namely, that the Farben men were the real top-war criminals, the real initiators of the aggressive war in comparison to whom the leading national-socialists had been only meaningless puppets, and that for this very reason the Farben men and the Farben concern should be exterminated. This theory in a striking manner resembles the thesis on the ground of which the Morgenthau plan wanted to turn the industrial state of Germany into a potatoe field, and this theory in a rather terrifying manner is linked up with the arguments by which the agricultural land reform and the industrial expropriations were and still are justified in the Eastern Zone of Occupation.

The Prosecution's theory number 2) states that though the aggressive war was intended and planned by Hitler, the Farben men definitely and positively knew thereof. This theory also can be found in parts of the above-said quotation from the opening statement of General Tayler, and there it is said in this connection, that these men were the guardians of the State's secrets of the Third Reich. This theory runs right through the indictment.

Both these theories contain the most serious and horrible charges which can be raised against Farben. In the last war the world has experienced the horrors and catastrophes brought about by the total war, on the avoidability of which opinions at least differ. For courtesy reasons I would not quote as an example the manifold German theories on this point but will confine myself to quoting the allied standpoint, i.e., that the undoubtedly terrifying horrors and consequences which the total bombing warfare entails cannot be avoided. From this difference of opinion there can be drawn one indisputable and general conclusion, namely that the decisive step and the basic evil is the fact that after all war is possible between highly industrialized and technified countries, and therefore every crime fades in front of that one crime: to have initiated a war in a guilty manner. Therefore both these theories of the Prosecution in particular the theory number 1) are in substance the most deadly charges which can be raised against I.G. These theories imply the charges at which the world's public opinion caught its breath

when it first heard about them. And these are the counts of the indictment on which it will depend in the first place whether in the memory of men Farben will continue to live as the criminal monster which the Prosecution contends it to be or as an unfortunate victim of the joint destiny of the German people.

I hereto note that during the trial both theories have not been mentioned with one single word anymore and we await with tension whether they will perhaps rise up to-morrow in the final plea of the Prosecution. We wonder whether the stinky corpse of both these theories will once again be presented to us after having done its duty against Farben o u t s i d e this trial.

Since the Prosecution during the presentation of their case have neither repeated both these theories which for the rest are also inconsistent nor offered any proof thereof, the Defense in its turn could not and had not to argue against them. There remained only a third theory, namely that Farben had to gather from many indications that Hitler planned and prepared aggressive wars and that therefore they had participated deliberately therein by their industrial achievements. In this respect the basic information has given some significant clues.

First of all I would draw Your Honor's attention once more to a chart which was offered in evidence as a ter Meer document, showing the dividing-up of the turnover of Farben's between old and new production fields. It showed that the turnover in 1939 in the old production fields amounted only to about as much as in 1929 at the period of the highest rate of production and that the rise

came from the new production fields. Now it is the most natural thing in the world that new productions bring about new sales which have nothing to do with the old business and therefore do not go at its expense but have to be added to it. At least this is the natural way of thinking and the reward of industrial progress. On the other hand, you will please bear in mind the comparison between Farben and the other big firms Dupont, Standard Oil of New Jersey, General Motors, United States Steels and the British I.C.I. Will Your Honors please remember the remarkable conformity of the corresponding curves of development in the years of 1926 - 1944. On the average we perceive the rise of production until 1929 then the retrograde development with its lowest point at about 1934, then again the rise beyond the production rate of 1929. For several reasons which I then stated those developments are especially convincing which took place with regard to the staff of I.G. Farben and I.C.I. which is also a European chemical enterprise, and in this respect especially the conformity is simply striking.

Furthermore Your Honors will please consider the development of national income in the US and Germany during the years of 1929 until 1941. Even in this respect there was established a conformity of development in both countries, hardly to be believed which finally led to the effect that in 1941 as compared with 1929 the national income in the US had increased by 28,62%, whereas in Germany it were 28,51%.

All this shows that the development in Germany, seen from an objective point of view was not decisively influenced by the Four Year Plan and the rearmament, but represented in the first line the result of a common economic

development in the world. This shows therefore that on the whole especially with regard to Farben, no striking development could be seen in Germany from which there could be drawn the conclusion that a gigantic armament was under way. But the case is certainly even more convincing from the subjective view point of that time; in view of the similarity of the world-economic developments what reasons could induce the Farben managers to become sceptical with regard to German developments and particularly the extent of rearmament, and to suspect plans for aggressive warfare?

But even if the development in Germany as a whole had been precarious from an objective point of view, why then was this especially the case with Farben or why could especially Farben percept it? The Prosecution assert it and try to give the impression as if Farben had played the dominant role in the Four Years Plan and in the rearmament, as if Farben and the German industry had nearly been identical.

Now as I have shown in the Basic Information, Farben's share in the German chemical industry - depending upon the relationship of capital turnover - strength of the staff and varying somewhat from year to year, amounted approximately to from 25,4% to approximately 48,5%, its participation in the whole of Germany's industry amounted only to approximately from 1,4% to nearly 4,7%. Above all it could be clearly shown that when considering the expansion of the volume of business between 1932 until 1938, i.e. during the Four Years Plan and rearmament Farben not only was not outstanding

but lagged far behind the rest of industry and behind the rest of the chemical industry; its participation in chemistry as far as capital was concerned decreased from 48% to 45% and as far as turn-over was concerned from 32% to 25%. Farben's share in the turn-over of the entire German industry and therefore practically also in its production, initially amounted only to 2,61% and up to 1938 that means in the time of rearmament fell to 2,03%. Farben's share in the total of German workers and employees was initially 1,75% and stayed from 1932 to 1938 at a level of about 1,5%. Only in the export field Farben's share increased because Farben held its export rate whereas other German industries did not. In the field of the entire German export from 1926 to 1938 Farben's share increased from 4% to nearly 8% in the chemical sector from around 39% to above 53%. This shows most impressively that the production rise in consequence of rearmament to a greater extent had to be attributed to the other German industries, whereas Farben remained international and pledged to world-wide commitments also in its practical business.

Bearing in mind all these figures one must consider that the share of industry in the total economy only amounted to nearly 40% while the remaining 60% fell to the share of handicraft, trade, traffic, agriculture etc. Considering that Farben's share in the total German economy was therefore 2½ fold less than in comparison to the total German industry that means it figured between 0,6% and about 2% according to the year and the relation which is to be considered.

Even if in the other German economy armament-production would have prevailed and would have been on a gigantic scale

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From what sources these men, the leaders of Farben should have had precise knowledge about the other 95-98 % of the German industry, the remaining 98-99.4 % of the total German economy ? It was reserved to the Prosecution to pass over this riddle silently in such a charming manner.

I would like to stop for a moment at this fact which surely is so much surprising for many, that Farben was not at all so big, was not this surpassing and overwhelming giant, as it was so often called. Considering capital, production, or staff, one by one, its share was 25 - 48 % of the German chemistry, 1.5 to 4.7 % of the total German industry, and 0.6 to 2 % of the total German economy, figures which somewhat changed in the course of years. But in contrast to it Farben covered 4 to 8 % of the total German export. That about was the place Farben held in the German economy.

And Farben ranged almost modestly in the number of world firms as I showed in the basic information. Concerning the export it once again held the top for some time. Considering the working capital, it exchanged in a wide gap from the others, with Dupont and I.C.I., the last and last-but-two place. The biggest firm in this respect, United States Steel, was partly more than five times as big. In the total turn-over Farben was generally at the last but one place. Here again initially United States Steel was the biggest one, lateron General Motors, every time with about the four-fold of the Farben turnover. Relating the staff, Farben mostly held the third place. In the beginning United States Steel was the biggest one and this again with nearly the threefold size, lateron it was General Motors again with the 2 to 2½ fold size of Farben.

Just as much as Farben was of international and world-wide standard in its business, it was too in its bearing. Considering everything, what has become clear during this trial of Farben's bearing against national socialism on one hand and against the world on the other, the result will be nearly of its own the following principle and the following clue: Farben considered itself the champion of peaceful human progress, the advocate of understanding among the nations and of cosmopolitanism, the pioneer of the occidental way of life, of private enterprise and of economic reason. And all this was in such a complete contrast to the national-socialist regime that this divergence could scarcely be overlooked and was clearly recognized by most of the leading men of Farben of to-day's defendants. In Germany, no man ^{who} felt and thought that way identified themselves with national socialism; they always thought and acted for the eternal Germany as a part of the world with her thousands of years of glorious history, of Germany which would survive this epoch of despotism of a small group of Germans who were unworthy of that name and some of whom, as is well-known were no Germans at all. To such men occupying the like positions in national socialism in Germany two ways were open theoretically. One was that of open opposition or declared passive resistance, the way to refuse the collaboration. I will not deny that this method might have been successful if it had been systematically organized in time by all the German nation,

and, what interests us most today, especially of the German industry. However, possible or impossible, this was not done anyway. As matters stood at that time and in view of the way they took later on, a clearly hostile attitude would no doubt have resulted in the immediate requisitioning of Farben by the regime, a complete conquest of this economic strong point by the national-socialism 100% mobilization of the enterprise for the service of the Third Reich. The second way which alone promised to be successful was that of evasive resistance in order to maintain its main position and thus save the economic reason. Only by this way Farben had the chance to remain independent and free as far as possible, to avoid complete absorption by the regime even to keep itself clean from national-socialism in the main points and thus continue amidst national-socialist Germany to be the brother of the world. This is the deep reason for many acts on the grounds of which the Prosecution tries to prove the alleged alliance with Hitler. If by such a resistance 100 strategic points have to be defended and the breaking-in of the enemy cannot be prevented in a rate of 30: Should then those other 70 points be abandoned voluntarily? So that the enemy may occupy all 100 positions completely and without any resistance? Such were things and that has to be the answer to all the reproaches, having once failed to prevent this or that, one should not have remained in one's post any longer

In any case Farben took the second part and took it with complete and almost astounding success, considering the circumstances. Farben was no national-socialist firm. Up to the very end, no real partyman succeeded in becoming a member of the Aufsichtsrat or Vorstand or in obtaining any other really important position in the enterprise. Farben in fact succeeded in preserving in the middle of a national-socialist Germany an asylum for cosmopolitanism for peaceful international economic understanding, for cooperation to the benefit of human progress, for private enterprise and economic reason.

Could anybody be astonished that during the Third Reich, and increasingly during the war Farben was continually looked upon with distrust. It was called the stronghold of plutocracy, the current propaganda term of that area for what is now meant by western democracies. Farben was the most hated enterprise in the eyes of the authoritative offices of the Nazi-regime; international, Judaized, plutocratic, nationally unreliable,- these were the common estimates and designations used by those quarters of us. Again and again during the war one was to hear from influential party circles that after the war first of all Farben, this stronghold of internationalism, that foreign body, that state within the state, was to be liquidated; one was to hear of Hitler's hatred for Farben. With constant sorrow we discussed during the war very often this danger and did not already know the way and the possibility to evade them.

Final Plea SILCHER

We were convinced and unanimous only with regard to our passionate determination to resist to the utmost of our power. We expected attacks threatening our very existence from national socialism or, alternatively from communism. But that the U.S.A., the citadel of free enterprise would be the one to strike the crushing blow that she would fulfil Hitler's testament; that indeed we did not expect.

Farben was not Hitler's allied, but its prisoner forced into services as so many in Germany.

The picture of Farben, of course, has its light and dark sides, as has everything in this world. It happens that the world is not perfect, and also the men who are in the dock today were human beings, not saints.

No human life is without its human shortcomings and failings. There are for instance indolence, fear of personal disadvantages, the urge for self-assertion, lack of courage, of endurance, of public spirit, of clear-sightedness. Within Farben too, this or that human weakness may have played its role in this case or that. But though they may have been shortcomings, they were no crimes, they were not criminal actions. I believe, that it is unanimously acknowledged to-day that foreign governments would and should have opposed the National Socialist regime at an earlier date.

Whether these governments made mistakes at the time and whether the mistakes which they made were pardonable or not are debatable points, but it has never occurred to anybody, and I hope, in the interest of human reason, that it never will occur to anybody in the future that these foreign governments committed a crime in acting as they did. The quotation from the wisest book of all nations and of all times, the Bible, remains eternally true: "Who is without sin amongst you, let him cast the first stone."

I consider it imperative that the judgment to be passed be viewed from a greater distance and in a closer connection. I do not think of course, that a sentence, dictated by convenience, will be passed. True is that

Justice and nothing but justice must be pronounced here, and who, better than we in Germany, who have ourselves experienced its horrors, knows the dread effects, that fearful consequence, the loss of all trace of human dignity, which follow in the train of justice made the lackey of the state political, when the profound wisdom of the old words "Justitia fundamentum regnorum" and of the gross and at first horrifying "Fiat justitia, perest mundus" is scorned and derided. But the consideration of the connections and of the consequences is a well-tried test of the validity of our reflections and opinions and it is for this reason that we should consider the connections and the consequences.

In speaking of connections and consequences, I would not imply, however, - and this I state in an effort to exclude from the outset, all possibility of mis-interpretation - that the fate of Farben, its final treatment at the hands of the occupying powers, its annihilation in accordance with Control Council Law No. 9 depend upon the result of this trial. This is indeed a normal process in the dissolution of trusts, in the routine of decartellization, a measure such as has been carried out against other firms at which no reproaches such as those made in these proceedings, have been levelled. By virtue of the unconditional surrender of Germany, the occupying powers do, in fact, prescribe the forms in which German industry may and may not continue to operate.

Moreover, Farben felt itself too big and prepared a reduction of its scope and a splitting up. It was not meant to do this in an overthrowing and smashing form of law with careful methods under preservation of the production forces and with the careful maintenance of the interests of all concerned. And I

myself would make especially a bad impression if I would dare to say something concerning that, after having as already mentioned taken part in a decisive way at the plan and preparation of this reduction. No, Farben is dead, and I fully realize that I hold a funeral sermon in this respect.

There is much more at stake: It is with dire apprehension that I and many others view the Europe of today, plunged deeply in the struggle for its future, that struggle which will determine whether it is to sink completely and finally into chaos, overwhelmed by the rising forces or whether it will rise again, full of strength, courage and wisdom.

The powers which have to decide that are still irresolute in how far in this battle for Europe the German people and the German industry shall be given a part. But everybody recognizes that the aid of German industry cannot be renounced. The condemnation or acquittal of Farben on the moral issues which your verdict will contain, will be a significant figure in this struggle. It will be of great importance how your Honors will judge the fundamental roll of Farben of the representative of the German industry under the powers of the demon Hitler and his National Socialism. For months now, a tragic saying has been circulating in Germany, "It is not yet clear who won the war, but there can be no doubt as to who lost its Europe." Do you, your honors, make your contribution to the suppression of this bitter and despairing utterance. Save Europe! Do not tear down a pillar, on which our own world rests!

Here in Harnberg, we are in an area over which the ice-sheets passed during the various ice ages. The land was no more to be seen, and no crops could grow. But the land was there, and when the ice-sheets withdrew, it appeared again, torn and broken, devastated and full of wounds, but still the old, good land, ready to bloom again and to yield its fruits as of old. The ice-sheets of National Socialism, lying on Germany and on Fartten, have been smashed by force of the weapons of your country, and we stand in front of the devastations and wounds. And fate has arranged it thus, that the smashing blow broke something other too which was no part of the sheets but only covered by them. So this happened to Fartten.

Final Plea Silcher

Think of all this that when you pronounce your judgment, you will pronounce your moral verdict on Farben!

At the end of my plea, let me please refer to my previous words: "ready to bloom and grow fruits". Some months ago I saw a film which bore, I believe, the title "Hunger". In it, the German people were shown how it was through no ill will on the part of the occupying powers that Germany was enduring hunger today, but that there was simply too little food in the world and that hunger was therefore stalking the entire earth. Since the year 1900, if I remember aright - the population of the earth had increased by 130 million people. I began to consider what the future for mankind would be if her numbers continued to increase on this scale. I lay no claim to powers of prophecy, but at the moment, I suddenly beheld as if it were a vision! Perhaps in a few hundred years, perhaps even within a few decades, food for the additional hundreds of millions of people who will by then have swelled the numbers of mankind will be produced in all those areas in which rubber plantations stand today, in the most fertile areas of the world, and rubber will be produced synthetically in a few factories dotted over the earth's surface a refined Buna. And these fields and fertile acres throughout the world will bear fruit and yet more fruit, unceasingly, growing ever richer and still more rich with the help of the nitrogen fertilizers made from that nitrogen which Farben has taught men to draw from the air we breathe. And the fields will be ploughed, the seeds sown and the crops harvested by machines driven by liquid fuel, and in other ways, the technical life and the civilization of mankind will be unthinkable.

without the engine driven by liquid fuel. By that time, the mineral oil fields of the earth will long have been worked out and throughout the world, fuel will be obtained from coal by a process first used at Oryssu and Leuna. And in the book of history the name of Farben will appear in golden letters as one of the benefactors of mankind and with golden letters beam the names of those men who accomplished this pioneering work.

And history will relate, as we read it now of past times: their fellow human beings accused these men of using their work to further their struggle for world domination, and threw them into prison. I hope, and confidentially trust that the book of history will go on to tell the reader: How wise, fearless and upright judges investigated their deeds, recognized their innocence, set them at liberty again and allowed them to resume their work in the service of mankind.

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Final Pleas, Individual Defendants

(English)

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Finnish Peat Anvils (Gneiss)

Case 6
Defense

Military Tribunal No. VI

LEGAL COUNSEL

on behalf of

Otto AMBROS

submitted
in June 1948

by

Karl H. F. L. M.
Defense Counsel

copy



Final Plea WEISS

May it please the Tribunal,

When on 15 December 1947 I undertook to act as Defense Counsel for Otto WEISS, three things were unknown to me:

Otto WEISS' personality

his importance and the extent of his work as a chemist and Farben itself.

Already at the time when the Prosecution presented its case in Chief I had the emotional experience of hearing Otto WEISS speak, when with the permission of this Honorable Tribunal he addressed questions to some of the witnesses.

I was impressed by the charming, and at the same time precise manner, in which he spoke as one chemist to another, to men who were his opponents.

That, however, did not by a long cry provide the key to this man's character.

It is a fact that during the presentation of the Prosecution's Case in Chief, Otto WEISS' name was mentioned many times in connection with the alleged preparation for aggressive war, with plunder and spoliation and with slave labor.

This, however, was at the same time some indication of the extensive part which Otto WEISS played regarding the happenings in the sphere of German chemistry, but it did not provide^a true picture of the nature and extent of his sphere of work.

Although from the beginning of these proceedings, I acted as defense counsel for one of Otto WEISS' co-defendants, the latter's defense did not call for that insight into Farben, which I found to be essential since taking on Otto WEISS' defense in order to determine the actual degree of his participation in the events.

Final plea WEISS

It was to be assumed in the normal course of things, that one month should be sufficient in order to complete my knowledge. I was also of the opinion that I had succeeded in this during the month at my disposal before the general opening speeches when the defense started to present its Case in Chief.

I have to admit to-day, however, that at the time of my opening speech on behalf of Otto WEISS I was still far from fully grasping that man's importance, his ability, his sphere of work and his position in Farben.

My opening speech for Otto WEISS was therefore only a formal presentation of a case, and was not carried by sympathy for the man, whose outstanding qualities I did not fully understand at that time.

Only prior to Otto WEISS going into the witness stand with me for three days in March 1948 did I grasp what kind of a man Otto WEISS is, did I understand other chemists' extraordinary devotion to him, did I learn, of what achievements in a certain sphere, a human brain is capable, did I understand why Farben put such a man at the helm, who came to them from the people, without pull or industrial connections.

^{would}
But/Otto WEISS have amounted to without his brains of a genius? The son of a Bavarian school teacher, with just sufficient schooling to enroll as a student and to pass his exams.

It was a stroke of luck for Otto WEISS, that he gained the affection of his University teacher, Professor Richard WILLSTETER.

Final Illness

He realized Otto HELLER'S talents and qualities. He equipped him for his career with all the education and scientific knowledge that an older man can give to a younger one, and thereby set him on a path by far outlasting his own span of life.

But as far as financial success was concerned, the only assistance Richard HILSEWITZ was able to give Otto HELLER was the advice, to apply for a position with Farbren. Otto HELLER was hired by the Deutsche Zellulose- and Holz plant, just as they would have hired any other chemist to fill a position which happened to be vacant.

Nobody, however, would have been able to prophesy an outstanding career for that young man.

On the contrary, when the German dyestuff plants amalgamated in 1925, there were many wishes to be satisfied.

There was little chance for a young man, however able, who did not hail from these circles.

And still?

Otto HELLER was not related, either by blood or marriage, to any of the leading figures of Farbren.

And the fact that he could have quoted Richard HILSEWITZ as a reference would from 1933 onward have been more of a drawback than a recommendation.

By that, I do not mean to say that pull and industrial background were the only determining factors for advancement in Farbren. For that I am not sufficiently familiar with conditions, and Otto HELLER would only be a living

Final File ABER-S

proof to the contrary for such a statement.

But how many good and excellent chemists may have worked ⁱⁿ Farben, without getting more than normal recognition for their work; they had to resign themselves to the fact that only they themselves and perhaps a few well informed persons on the inside realized that scientific work was being accomplished here for the benefit of humanity; within the large framework it would show up as the economic success of the giant-concern and its management, and they themselves would never gain anything from it but their own and their superiors' satisfaction for a job done.

What was it then that brought about Otto ABER-S' advancement?

Without being a chemist myself, on the basis of the countless statements of chemists, I am to-day able to say that it was due to his complete mastery of organical chemistry, above all its most modern branches, namely plastics, raw materials for varnishes, washing agents and ingredients needed in the textile industry, and the countless organic preliminary and intermediary products of all types, coupled with his rare ability to determine the practical application of the laboratory results on an industrial scale, that Otto ABER-S became a factor in Farben which was not to be overlooked.

I am able to quote chemists who said that. Doc. LA No. 108

Exhibit 41, (vol. I A, page 23) reads as follows:

"Of the approximately 100 million Reichsmark of the annual research budget of the I.G. Farbenindustrie Aktiengesellschaft, about one third was at the disposition of Dr. ABER-S.

Final Idea MILES

"We can say without boasting that our research laboratories in Ludwigshafen, which were managed by Dr. MILES, belonged to the most important of the I.G. laboratories and that our efforts were of decisive importance for many modern developments in the field of organic technical chemistry. ..."

"All these achievements have made Dr. MILES one of the greatest chemists of German industry and as such he was and will always remain an inspiring ideal to us, his closest co-workers."

Ludwigshafen on Rhine, 21 January 1948

Dr. J. Walter HENSE
Dr. Wolfgang DUEHL
Dr. Heinrich R. JF
Dr. Berthold SCHMID "....."

Just as during the prime area of jurisprudence in Germany, there were also men who combined the activities of practice and research work so, in the sphere of chemistry, Otto MILES was gifted with equal mastery of scientific research work and its practical application.

Otto MILES became chief of the Ludwigshafen group for intermediary products and the Farben commission for intermediary products, as well as of the Farben commission for the production of plastics and raw materials for laundering agents.

He was completely satisfied with that. Articles were appearing in the stores which were made from his plastics, textiles were being dyed with the Indanthren-dyes manufactured at Ludwigshafen and the products of his commission for raw materials for laundering agents were marketed in the form of soaps and washing agents.

Final plea AMERUS

What more could he want?

It was his ideal, to create more new things, to contribute even more towards peaceful development.

I do not know if, given only these conditions, Otto AMERUS would ever have gained more influence in the organization than other chemists.

However, endeavours of the Third Reich to achieve autarky necessitated new installations apt to make HITLER's first aim practicable, namely "to render Germany independent of foreign countries."

One of these possibilities was to replace natural caoutchouc by synthetic caoutchouc, called Buna. It would be tedious to relate in detail the development of Buna and Otto AMERUS' part in it. May it suffice to state that there was no other scientist in Germany better equipped to work on the theory and practice of that subject than Otto AMERUS.

Setting aside all juridical, commercial and political considerations, Otto AMERUS was found to be the one man capable of initiating a large scale effort in this sphere and therefore he was assigned to this task.

He was assigned to this task under the slogan of savings in foreign exchange and satisfaction of German civilian traffic needs.

And it was under that slogan that Otto AMERUS accepted the task to create Buna, as is shown by his speech on June 1937 in the House of Technical Sciences at Essen.

The following is quoted from Doc. Nr. 201/Bch. 51 (vol. 2 A/1, 1):

"The motor car industry, in particular, which in Germany and America accounts for about 60 to 70% of the rubber consumption, came to be dependent on it and its whole development.

In view of the key position which this industry is gradually

ending to hold in the economic life of every modern state, it is understandable that every country is endeavoring to secure its rubber supply.

The new Germany, which considers motorization a decisive factor for economic revival, must be independent in its actions. The State, therefore, decided, as the safest means to solve this problem, to develop its own rubber production by way of a synthesis of Buna."

In this way, Otto AGAS in 1937 built Schkopau, the first German Buna plant. The fact that in connection with this, he became on 1 Jan. 1938 a member of the Farben Vorstand was not important to Otto AGAS. It was perhaps important to those who thereby wished to give to the establishment of the first German Buna plant, the necessary outward character just as in connection with it, Otto AGAS was made a member of the NSDAP at the same time. Otto AGAS devoted himself passionately to the establishment of Schkopau; with that passion that a man brings to a task, which gives him satisfaction in his profession; in the same way as a lawyer takes up a defense out of passion and like an artist creates his works with passion and is obsessed with them.

Whether Otto AGAS himself pondered on the purpose beyond the official slogan?

I am convinced that he personally was only motivated by the idea to bring about a chemical and technical achievement, and to serve human progress through the

Final Film AMEROS

creation of Buna.

He produce synthetic caoutchouc in order to replace and improve on the natural product gave the same satisfaction to him, as a chemist, that the discovery of a new therapy gives to a physician, if he can thereby save the lives of his patients.

The Prosecution asserts to-day: If Otto AMEROS had not produced any Buna, German motor vehicles would not have been able to run; he therefore assisted in the preparation of aggressive war. What mistaken concept of actual facts!

Is it the fault of the physician, if the patient, whose life he saved, becomes a murderer?

The Brothers WRIGHT, brought fulfillment to humanity's age old dream of being able to fly. Are they war criminals? Is the memory of these men of genius desecrated because they did not foresee that the fulfillment of that dream would be more of a curse than of a blessing?

No, and a hundred times no.

For it is not the fault of the inventor, that technical progress frequently proves more of a curse than of a blessing to humanity; it is the responsibility of those, who feel themselves called to direct the fate of humanity and who, when they cannot see any way out of what they believe to be a blind alley, choose war as a way out, which at the same time they present to be the "Father of all Things", and a necessity according to the laws of nature itself.

Final Plea AMEROS

Otto AMEROS however was a chemist who was not affected by the play of mundane forces but who was enthusiastic for the task himself. I do not want to create a false impression; I myself am too much of a realist in order to present Otto AMEROS as a pure idealist, a pure benefactor of humanity.

No, even to find satisfaction in one's work is a matter of egotism, but it is entirely different from the way the Prosecution presents it. Otto AMEROS had no need to push himself to the foreground in order to be entrusted to such a task as the production of Buna. It fell into his lap on its own accord.

He had no need to bring about the construction of that plant on the basis of illusions and false hopes.

He was called to this task anyway.

The peaceful purpose of the motorization of civilian traffic was in itself a sufficiently logical reason in order to set up such a plant.

Otto AMEROS actually created productive values and only such values.

He could not guess what later on others would do with them.

To me at any rate it is established beyond any doubt that Otto AMEROS never constructed the Schkopau Buna plant in order to prepare an aggressive war.

As a jurist I have only got to ask myself whether Otto AMEROS was perhaps prepared to take it into the bargain, that others intended to use Buna for war purposes?

Final Plea AMEROS

It would abandon the firm ground of reality, were I to assert that Otto AMEROS would not have produced one single fiber of Buna, had he known that the German army as well would benefit by it. However, there are worlds of difference between that fact and the claim of the Prosecution that Otto AMEROS thereby wanted to assist in the preparation of aggressive war.

Seeing that at that time even the foreign countries recognized the German Army whose allegedly only purpose was to defend, ~~why~~ why should Otto AMEROS have had any objections to their using Buna? In knowing and accepting this fact he did not, in my opinion, commit any punishable act.

A guilt regarding the preparation for aggressive war within the meaning of the Indictment would only exist under the following two conditions:

- 1) If Otto AMEROS had personally gone into conference with the rulers of the Third Reich, in order to discuss with them on the waging of an aggressive war;
- 2) If Otto AMEROS had known that a decision and a plan for such an aggressive war had been made.

To-day it may be assumed that HITLER wanted war in case his claims for power were not accepted voluntarily:

Final Plea AMEROS

There, however is the evidence that HILBER or his collaborators included Otto AMEROS in any form whatever in their councils or informed him of their intentions? They did this as little in Otto AMEROS' case than in the case of the entire German people.

What has been said with respect to Buna holds equally good, however, of Otto AMEROS' activities in other spheres.

I have mentioned before, that Otto AMEROS was an expert on organical chemistry, which is that branch of chemistry which he repeatedly referred to from the witness stand as the modern chemistry of plastics, raw materials for varnishes, synthetic fibres, laundering agents and ingredients used by the textile industry, tanning agents, dye-stuffs, including their preliminary and intermediary products.

They formed the basis for Farben's industrial turn-over, their outstanding position in the sphere of chemistry, but they did not constitute any preparations for aggressive war.

It is a peculiarity of chemical synthesis that materials serving peaceful purposes, may at the same time be suitable for the purposes of war and therefore also military agencies made enquiries of Otto AMEROS concerning the results of his research and his experiences.

Thus they were interested about his experiences concerning certain preliminary and intermediary products, which apart from their peaceful purpose, were also suitable for the production of chemical warfare agents, gun powder and explosives.

Final File AMEROS

Thus, Earl KRAUCH asked him to inform him of his experiences and the general development of science in connection with such products. But what did this amount to?

I have already mentioned that AMEROS was a chemist and as such the most important expert in the field of organic chemistry.

When a man like Earl KRAUCH approached Otto AMEROS for information, the latter could and would not turn down the request. After all Earl KRAUCH was one of the leading personalities in Farben and it would mean turning everything topsy-turvy if one were to expect Otto AMEROS to refuse to give the necessary information.

When the Army Ordnance Office approached Otto AMEROS and asked him for information on various questions, he did not turn these people down but he did what a normal citizen of any state would still do to-day, he gave the official representative of his country the required information. Moreover, Otto AMEROS, just like most Germans, was exposed to the pressure of the forceful and thoroughly logical propaganda of the Third Reich which managed to convince the public, even in the case of a zigzag course that the greatly stressed general policy of a peaceful solution of all problems, was being adhered to.

Final Film AMEROS

The slogan of re-armament for the protection of peace was used as much at that time as it is to-day. The responsibility for the preservation of such a policy lies with the leading statesmen who determine the actual political course.

The question whether or not this excuse for re-armament was to be kept up, was solely decided by Adolf HITLER and his inner circle. But at that time, the great mass of the people, to which Otto AMEROS belonged as well, believed that this man meant what he said.

Once more to-day experts all over the world are again engaged in military matters.

They trust that their work will not be abused. May they never be disappointed in this trust.

But if this were to happen, could one possibly prefer charges against them? And does the same not hold good for Otto AMEROS?

The occasional advice which Otto AMEROS gave to army agencies was only a secondary job to him. Moreover, he was of course not the only one who was approached by army or government representatives. Just as they came to him so they approached textile experts in questions of clothing, they called upon the most capable exponents of tropical medicine and anti-epidemic campaigns in medical questions etc. etc.

Final Piece AMEROS

Otto AMEROS never did more than hand on his experiences and give advice, not even in the one case in which he was perhaps close to doing more than give his expert opinion. I am referring here to the occasion when Karl KRAUCH asked him for his opinion on preliminary products for gunpowder, explosives and chemical warfare agents.

But in 1937, he had to face something different, something that could have changed him with regard to his position and his working sphere, and, was Farben itself.

After he had been appointed to the Vorstand of Farben, he had of course widely different organizational possibilities.

The fact alone that Farben was a merger of many firms which had previously been independent, meant that the various plants could, at a later date, still preserve a certain measure of independence.

Also the large variety of products manufactured by any one of these plants could not put out an overlapping that is inherent in chemistry as such, but on the other hand it strengthened the independence of each plant in its position as a member of Farben.

When, in 1937, Otto AMEROS was constructing the Schkopau Buna Plant,

he would have had the unique opportunity of creating through this plant, an independent position for himself within Farben which could have existed side by side with the old Farben plants.

Final Film AMEROS

But in spite of this, he headed the Schkopau plant over after having, for a year, acted as its plant leader.

He did this not because he did not recognise his chance of creating for himself a strong position, but because he had no inclination for being a factory director. His sole wish was to create and invent. In the same manner, the subsequent setting up of a second Buna plant in Rudol also remained a milestone in Otto AMEROS' technical work. But neither as regards his economic nor his organizational position did he wish to become an entrepreneur instead of a chemist.

The only reservation which Otto AMEROS made for himself with regard to his plant at Schkopau, was that he remained the technical representative in the Vorstand of this plant. This was a matter of course for no-one knew more about this plant than the man who had set it up. This was Otto AMEROS' only stake in the Buna plant.

Basically, Otto AMEROS remained true to himself and as chemist he brought about further improvements in his organic chemistry for the promotion of technical progress and for the benefit of mankind.

After 1938, it is true, doubts seemed to gather as to whether or not HITLER was preparing to realize his aims by means of a war, if necessary, but these doubts were countered by increased propaganda pressure

Final Piece IVBOS

and the complete impossibility of altering matters which had reached the stage where the individual could no longer bring about any changes.

Thus the individual was finally reduced to hoping that a kind fate would will it so that the man who held all the power would be restrained by prudence from resorting to the very last means, namely war.

But no kind fate intervened and war broke out. This war was not hailed by the German people with great enthusiasm.

Terror and damning recognition of the gigantic betrayal seized the mass of the people. The First World War was still too fresh a memory. The pictures of fathers and sons who had been killed on the battlefield were still hanging in the rooms of the people, in town and country.

Great was the disappointment that this man who had called himself a veteran of the World War, had, although he had continuously given assurances to the contrary, not been able to find any other way out but war - a war, which the broad mass of the German people did not wish to fight on behalf of the Polish Corridor.

How can we expect Otto IVBOS to have had thoughts different from those of the majority of Germans?

I believe him when he says that he was just as surprised and horrified as every other German when he heard of the outbreak of war.

Final Plea AMERON

This in itself is also the best refutation of the Prosecution's assertion that Otto AMERON participated in the preparations for offensive war.

His peacetime work was also interrupted by this war. His home and, his main factory in Ludwigshafen were now in the range of guns and he knew as little as anyone else what the future held for him.

In the beginning, the war brought about no change in his work until the need arose once again, for someone to perform practical work.

When France was occupied in 1940/41 and when after negotiations with the French dye industry lasting almost one year, the firm of Francolor was founded, Otto AMERON was called in again in order to make this foundation a technical reality, i.e. to enable the French factories to prosecute their work.

Here again it was a technical task which Otto AMERON had to fulfil and he embarked upon it with great eagerness.

Today the Prosecution objects to this action but quite unjustifiedly so, for from a humane point of view, Otto AMERON by this very action, helped many French who would have fared badly without such a help and who, but for him, would probably have had to leave home and family in order to go to Germany.

On the other hand Hitler could never have been restrained from acting as he did even if it would not have resulted in the employment of the workers of Francolor.

Final Plea AMEROS

and even if the industrial capacity of Germany would not have been increased in certain sections of peace production.

The Prosecution has tried to assert that Otto AMEROS mainly endeavored to use the French plants in the interest of German war production, but the opposite is the case.

Apart from minor matters, the real peace production was transferred to France, a fact which in any case facilitated the participation of the French in this work since they could hardly be expected to make weapons to be used against their Allies. Time and again Otto AMEROS stressed the fact how much he would have liked to have worked with the French.

There is no evidence to show that this is not correct. It is the very fact that during a war a person has treated a conquered people humanely and justly which should provide a reason for a positive valuation of his other intentions. But even a person with the best intentions may nevertheless commit an act to displease another.

But whether or not he can be prosecuted is another question.

For more than three years we Germans have been taught what it means to belong to a conquered nation.

I personally have not observed any conciliatory tendencies. I know very well that I belong to a conquered nation. It is just for this very reason that I especially appreciate a friendly word and that I rate good intentions doubly high.

Final Place ABEROS

At the time under discussion Otto ABEROS was in the position of the victor.

The fact that he not only exercised moderation but that beyond the natural, correct behavior, he adopted a humane and comradely conduct, can only be counted in his favor. In any case, his conduct lacked any elements of inhumanity, any sting and any intention to enrich himself.

What remains, is the fact that he provided the French plants with work.

If this can be interpreted as a crime then I don't know what is meant by the term, as Otto ABEROS' letters show, he never showed great inclination, even prior to the outbreak of war, to occupy himself with military tasks.

Such work was not in his line and, after all, the Army Ordnance Office had plenty of its own experts for this job.

They could ask him for his experiences, but that was all.

He did not wish to be army chemist.

In passing-time, Otto ABEROS had succeeded in preserving more or less his independent position.

War put a stop to it.

Final Plan AMEROS

Otto AMEROS was not tied to any one particular plant. Instead he was commissioned to carry out all sorts of tasks which others could decline by referring to their responsibility in the plants.

He could not even plead a lack of technical knowledge. There was no-one who would have believed that he, as leading acetylene chemist, was not in a position to set up a chemical factory which, like Gendorf, was to produce all preliminary products for gun-powder and chemical warfare agents, derived from acetylene.

Thus, Gendorf and subsequently Dyhernfurth and Falkenhagen were set up.

The last two plants manufactured the most modern chemical warfare agents, the large-scale production of which could only be organized, during the war.

You will ask whether Otto AMEROS enjoyed this work. I never asked him this question. I merely watched the course of events.

Chemical warfare agents were produced.

When the question arose whether these should be used or not, the decision depended on Otto AMEROS' opinion, which he gave to Hitler at his Headquarters in May 1943. The life of millions of human beings who would have had to experience further torments in addition to the sufferings of war, was at that time in the hands of Otto AMEROS.

And what was Otto AMEROS' conduct?

It cannot be denied that at this decisive moment he did more and achieved more in his endeavors for suffering humanity than all members of the resistance movement together.

Final Plea AMEROS

The conference itself must have been a breathtaking experience for Otto AMEROS. After all he knew what a positive or negative answer from him would amount to.

I can well imagine today how he gathered his spiritual forces.

How he must have pulled himself together in order to strike the right note at this conference; how he had to weigh his words in order to prevent suggesting to the suspicious Fuehrer the very opposite of what he wanted to be done.

It probably even meant complete self-denial.

Who can deny that there was a great temptation in answering the question "Are we ready for gas warfare?" by saying: "Yes, my Fuehrer!"

It could have meant so much to Otto AMEROS: honors, decorations, acclamations, the good will of persons in the highest positions and finally the feeling, if everything were to turn out alright, of being praised as a decisive factor in victory.

These are minor human considerations which become a mere bagatelle compared to the lives of millions of people, but which, as a result of human nature, are frequently stronger motives than all commands of ethics and common decency.

Otto AMEROS managed to shake off this temptation; he carefully and deliberately weighed the pros and cons and he decided against poison-gas war.

Final Plea AMEROS

What ever may happen to Otto AMEROS, the service which he rendered to Germany by this decision will never be forgotten in this country.

The fact that he did not sabotage the production of chemical warfare agents but that he started this production, although at a very slow speed, cannot detract anything from the merit of his action.

There is no provision under International law to prohibit the production of chemical warfare agents. Under these conditions it was impossible to refuse in wartime to produce these materials.

Towards the end of the war, Otto AMEROS also sabotaged the orders for destruction and he thus made a considerable contribution towards the preservation of Upper Bavarian industry.

But all this is insignificant compared to his conduct in the question of poison gas warfare.

In order to give a complete picture of Otto AMEROS' activities, I must also deal with the Farben Auschwitz plant which has been the main topic of this trial during the last few months.

Today the name of Auschwitz has become a concept all over the world.

Unfortunately it has become a concept which to us Germans brings a feeling of distress and shame, a feeling which would be unbearable if we could not plead that it was but a small group of people who committed mass murder there.

Final Plea AMEROS

Unfortunately Farben erected a plant near this place and the man in charge of construction of its Buna plant was Otto AMEROS.

What brought Otto AMEROS into that position?

Once again he had been selected to set up a plant which, in this instance, had not been planned as a part of the policy of self-sufficiency which I mentioned early on, but this plant had become absolutely necessary in order to satisfy the increasing demand of caoutchouc for war purposes.

Otto AMEROS had already set up both of the German Buna plants, at Schkopau and Huls. What could be more natural than to entrust him with the setting-up of the new Buna plant at Ludwigshafen and Auschwitz?

I am sure that this time Otto AMEROS did not embark upon his work with the same ardor as in the case of Schkopau because it did not mean another step in the line of development but was merely set up owing to the requirements of war.

Otto AMEROS did what was expected of him.

He selected suitable sites for the erection of a new Buna plant.

The decision as to the actual location of the plant did not rest with him.

Whether Otto AMEROS is responsible for the fact that the new plant was set up in Auschwitz and whether the plant was built there because of the Auschwitz Concentration Camp or vice versa must, as far as Otto AMEROS is concerned, be decided in his favor if only for the reason that he had been entrusted with the setting-up of a plant only in his capacity of a chemist and technician.

He made suggestions with regard to suitable sites from aspects for which he had to answer as a chemist and technician. The availability of water, coal, and lime made this or that place into a suitable construction site. Water, coal and lime are regional phenomena and cannot be moved but one can bring human beings to them. It is always man who comes to mineral deposits, and not the other way round.

The Auschwitz Plant was not set up where it was because of the concentration camp but the opposite is true.

This is the reason why Otto ALFROS declared time and again that he had selected the construction site without consideration to the concentration camp.

I believe his statement.

In addition, in my trial brief, I brought evidence to prove the truth of his statement.

The employment of workers was the concern of the Reich which had commissioned the construction of the plant and which placed the orders. The responsible officials and functionaries of the Reich were the persons who had to decide where the suitable workers were to come from.

Thus there were the people who hit upon the idea to employ concentration camp inmates but it was not Otto ALFROS who merely ascertained the existing mineral resources in his capacity as chemist and technician.

If the responsible officials and functionaries of the Reich would have considered it necessary to employ these concentration camp prisoners, they would indeed not have found it difficult to erect a concentration camp there, if one had not already existed.

I decline altogether, also in the name of Otto ALFROS, to deny Otto ALFROS' responsibility for an act for which he has to answer.

But where in the process, in the minutes of any conference, on the subject of the employment of concentration camp inmates, which contains or even mentions the name of Otto ALFROS?

Final plea ATRO3

And so I repeat my question for the Prosecution: "There is this pressed?"

A: I know there will be no answer.

It is correct that Otto ATRO3's activity was not limited to suggestions concerning the site for the Auschwitz plant. Otto ATRO3 was also interested in the development of this plant but his interest was the same as that for the plant at Schkopen, Duels, Dondorf, ~~Glabbe~~ and Falkenhagen.

Otto ATRO3 was also responsible for the correct planning and development of the plant from a chemical and technical point of view.

But he could, however, not occupy himself with the details of practical development.

This must be clearly expressed here. However, Otto ATRO3 has not failed to point out this fact. You will ask, why?

I believe I know the answer.

He feared to give rise to the suspicion of being a coward by shifting the blame from his own shoulders, and nothing can affect this man as much as the fear of losing his self-respect. But I, as his counsel, am obliged to call a spade a spade and make matters perfectly clear without consideration for such smallilities.

But in this connection it is necessary clearly to define his responsibility.

Final plan AFBOS

A man, who did not come to the Auschwitz plant more than, at the most, three or four times a year cannot take over the responsibility for anything that happened at the building site.

Nobody would have expected that of him at that time.

Neither was Auschwitz to become his permanent place of work, just as little as Schöpsen and Euels had been permanent.

Otto AFBOS had no abilities to be a director or an entrepreneur.

The fact that he participated in construction meetings, even that he visited the concentration camp at Auschwitz and that he saw prisoners at the construction site, has no bearing on this statement.

Otto AFBOS could not do anything against the conscription of the prisoners. Their assignment was ordered from above and the labor agencies, which were supposed to furnish other laborers, but could not, always referred the plant management to the possibility of using prisoners as laborers which was even ordered from above.

It is understandable that the great mass of prisoners had nothing good to say about Auschwitz-Birkenau.

But, who would expect a prisoner to state that it is nice to be deprived of his liberty? And especially a class of prisoners, who was kept beneath the status of regular prisoners?

Otto AFBOS did not at all approve of using concentration camp prisoners. But he could not do anything against it. He even visited the concentration camp Auschwitz in order to get informed.

Final plea ARBOS

Naturally this visit gave him a completely wrong impression of a concentration camp, to the extent that he even made favorable statements about the various institutions of the Auschwitz camp.

Today, when we know everything, this seems almost incredible, but, on the other hand, it also seems credible, if one knows how clever the camp was in camouflaging its things, which it wanted to present in a favorable light.

I have made the test and I called before this tribunal Dr. MULLER, the only German witness, whom I consider to be beyond doubt and suspicion.

Although he himself was an SS physician at the concentration camp from 1943 until the end of the war, Dr. MULLER was the only one whom the

Highest Polish Court at Cracow admitted in the great Auschwitz trial.

To be true, he had to report terrible things, but I wanted to know the truth, even if I was attacked for it. I believe, that we Germans, more than everybody else, must be most particular about the truth. For this reason such a trustworthy witness was just what I wanted for this High Tribunal. From my brother's stand I want to thank Otto ARBOS that he, in the same way as I wanted to find out the truth and approved of my calling this witness.

The positive facts which I learned from the testimony of this witness were, that the truth about Auschwitz was not known to the general public.

I should think that the rumors about the camps did not penetrate beyond an area of about 100 kilometers around Auschwitz.

The rumors passed on within the neighborhood of Auschwitz, were of various kinds. They did, however, not furnish the truth about what happened in that sinister forest of Birkenau.

The trains loaded with hundreds or thousands of unhappy victims which went into the Auschwitz camp, turned into the camp before they passed the Auschwitz railroad station. They were closed when arriving with their victims, and they were closed in the same way, when they left the camp empty.

Dr. MURCH also confirmed the existence of a model block, block 13, which was shown to visitors and which had clean barracks, sanitary installations and treated prisoners.

The burning piles of wood on which the unfortunate people who had been killed in the gas chambers were burned, since the crematoria could not hold them any more, could not be obtained by any witness - be seen from the train or from some other place outside of the camp. They were well concealed and were burning in that horrible forest of Birkenau; only the light of the fire was reflected on the sky.

Dr. MURCH also stated that the Jews who came back to the original camp from one of the Auschwitz labor camps, where, asked in Birkenau.

It is true that this internal order was valid for all of Auschwitz.

Most unfortunately, this order applied to most Jews who were in Auschwitz, except to some, later to others.

For example, but HILF and his leaders, and those who let themselves be made his henchmen, could do anything about it.

The prerequisite for any participation, even a very loose one, on the part of anyone else would always have been, that he knew something about all that.

Dr. MURCH, however, expressly denied this knowledge. At least he made no certain to believe, that Otto M. B. - to come back to him - could not have known anything about all those things, unless

He would not have been expressly informed of them, but there is not the slightest proof for that.

Only one of all the prisoners who were witnesses here in Auschwitz in connection with the Auschwitz plant, had ever heard of the name of AMROB. He was the prisoner HENRIK, whom Otto AMROB addressed during one of his visits at Auschwitz and whom he asked about his work and his plans. This prisoner testified, that Otto AMROB was very good to him. He also said, that he suspected that Otto AMROB knew about the fate of the Jews at Auschwitz.

Apart from the fact that Otto AMROB himself denies to have known anything at all about this matter, the behavior of a prisoner can be easily explained.

Most prisoners believed that the world outside would have to know about the things which they themselves knew. They forgot to imagine how the world outside could have gained knowledge about things about which they themselves were not allowed to speak, since they would have been killed had they violated the order to keep silent.

In view of the given facts I cannot understand why the prosecution always connects Otto AMROB with the east-north of prisoners in Auschwitz and the selection of their place of work with regard to the concentration camp.

The claim that Otto APROS was responsible for the management of the Auschwitz plant, cannot be maintained.

This is best proved if one considers the size of the plant enterprise which could be only handled by someone who was right on the spot. Incidentally, APROS did only half of the planning. The other half was done by the Leuna plant of Fernau.

APROS document HI 11543/exhibit No. 220 proves who determined the selection of the building site:

High Command of the Wehrmacht, Berlin.....

Dear Dr. APROS: Pardon me for answering so late your letter of 20 January. In the meantime there were several discussions at the Reich Marshall and at General Field Marshall Keitel with regard to the problem of establishing a plant of Leuna, which also had some bearing on the decisions on June 4. In the meantime this decision has been reached.

The plant will be built at Auschwitz in Upper Silesia. If you wish to have a discussion concerning matters of personnel, I will be at your disposal some day next week.

signed: signature.

Document APROS HI 11543/exhibit No. 221 shows who decided about the allocation of labor. It says:

High Command of the Army, Berlin.....

Re: Labor Requirements for the construction project
Kaiser-Werk Auschwitz.

With regard to the above matter I want to inform you that on 17 February 1942 the General Plenipotentiary for Special Questions in the Chemical Industry

and the High Command of the Army have reached an agreement according to which Buchman takes over the task of providing labor for the IG plant (fuel and tung) as well as for the Witten plant and that, for this reason both plants will be considered as one unit as far as labor allocation is concerned. Signature."

"Does the prosecution want to say against those two basic documents, which clear up the real facts completely?

The fact that at the Auschwitz plant of Jochen there was a table of organization which mentioned Otto AF 203 as one of the business managers the draft of

Nobody claims to say that Otto AF 203 was not business manager of the Auschwitz plant despite that draft.

The first that weekly reports were made out at the Auschwitz plant, which contained details about the development of the Auschwitz plant and which were also sent to Otto AF 203's office at Ludwigsbrunn?

Then Otto AF 203 had completed the necessary preliminary work for the plant ordered to be built at Auschwitz, a staff of engineers and foremen was sent to the construction site. Then the plant expanded later on, this staff developed into the plant management of Auschwitz.

The person who was located at the plant is best qualified to make statements about the development of the plant. This is chief engineer Rust. Upon my objection (para 14009) of the English transcript

Q. "Witness, the prosecution has said that both, ~~GUERTEL~~ and ~~LEHNER~~ wanted to have the fence around the plant at Auschwitz, so that the prisoners would be safe against mistreatment ^{at} while they were at work. Without, commenting on this opinion of the prosecution, I should like to ask you to what extent ~~AF 933~~ informed about these things?

A. "AF 933 was normally informed about these things during the construction months. He attended them regularly, but I want to emphasize, that at those meetings everything was discussed in general outline and very few details were given.

On para 14045 of the English transcript the witness furthermore says:

Q. "Now I/AF 933, before the noon recess we were discussing the weekly reports and you said that, "What was your position at the construction place?"

A. I was the construction manager.

Q. And later?

A. I was the head of the construction department.

Q. With reference to your affidavit AF 9319 I would like to ask you to

to explain AEROS' responsibility."

A.: Dr. AEROS, as a member of the Vorstand, was entrusted only with the task of issuing directives, on a broad basis, to the construction engineers according to which the building project was to be carried through.

Q.: You are testifying that fact as a witness although you yourself were the construction manager and later continued in a function which dealt with the construction of the plant?

A.: Yes.

Q.: **UNDER OATH?**

A.: **YES**

The entire problem of Otto AEROS' responsibility for Auschwitz and for all plants like Schkopau, uels, Buckel, Gendorf, and Lybernfarth and Falkenhahn, can be explained in that way that Otto AEROS never was in charge of only one special plant, but that he was only responsible for the sensible development with regard to all chemical and technical matters in all those plants.

All questions concerning the plant management from the social point of view had nothing to do with his sphere of activities.

Otto AEROS is like a ball rolling between two tracks, which touches on all spheres of organic chemistry. One track determining the course of this ball is the departmental organization of Iarben and in addition to this

the many state organizations and authorities; the individual life of the plants constitutes the other track. Otto ALBROS touches both tracks only on the side.

It would also be completely wrong to say that Otto ALBROS is responsible for Auschwitz.

As a chemist and technician he represented the Buna branch of Auschwitz at the meetings of the Vorstand, but this was his only connection with Auschwitz; he had entirely the same connections with many other plants.

It just cannot be imagined how Otto ALBROS should be punished for having had the best brains as a chemist in all of Germany, for having realized the latest technical achievements and thus, indirectly for having been in contact with the policies and treatment of people in the Third Reich.

It would be a case of participation, if Otto ALBROS had at the same time made profits out of it and enlarged his fortune, and had climbed up on the step ladder of success, leaving behind him the bleached skulls of those who had to die at Auschwitz.

Nothing of that kind, however, can be said regarding Otto ALBROS. Not Otto ALBROS, but others are responsible for the deaths of the victims of Auschwitz.

Because of the variety of his duties within Tarnen, it is difficult for Otto WITKOS to define the position he actually held.

I vividly recall the case of Lurcil, that construction company, which carried out the Reich orders of the state-owned plants of Gendorf, Dyhernfurth, Falkenhagen and also Ansbach.

It formed the framework, within which, from the local view point, Otto WITKOS had to operate.

I am not sure, whether I and Otto WITKOS would have succeeded in clarifying the meaning of the Lurcil company at all, had not the honorable Justice Curtis J. SHAFF had intervened in my re-direct examination and had elucidated the meaning of "Lurcil" pointing out the difference between the German and American version on page 6204 of the transcript in the following manner:

Q.: I think there might be the possibility of some confusion because of the difference in the way in which the term "construction firm" is used in your country and ours. Just in order that I may be clear, may I ask you, did this construction firm employ workmen or did it have building equipment and machinery and tools of its own?

A.: No, your honor, they didn't have any equipment of their own.

Q.: Did it enter into construction contracts with principals?

A.: Yes.

Q.: Then did it contract with what you termed "building firms" for the actual construction?

A.: Yes, your honor, the executing part was then the building firm.

Q.: So that is a clear distinction that you wish to make between what you claim for a construction firm and a building firm?

A.: Yes, your honor, that's the difference.

Q.: Thanks.

Finally I have to deal with the fact, that foreign labor was employed in all plants, under the Otto ABRCS' supervision as far as the chemical and scientific sphere was concerned.

As far as the conscription of foreign labor as such is concerned, Otto ABRCS tried to help them wherever possible.

There exists no connection with the coercion exerted by the German authorities for labor conscription in the occupied countries, nor with exploitation or profiteering.

Thus the picture of Otto ABRCS is entirely different from the way it appeared when presented by the Prosecution and it will remain different, whatever else the Prosecution may have to add to it.

Otto ABRCS was and remains a chemist and a technician, he neither was nor did he become a manufacturer. To convict him would mean a sentence against the spirit which strives to serve progress. To convict him would also mean to ignore the fact, that one is always wiser afterward than before.

HITLER's dictatorship was something completely new for the German people.

The men who could have prevented that dictatorship failed or, rightly or wrongly, believed that an understanding with HITLER could be reached. Those who not even externally wanted to change their attitude had to flee.

The truth concerning the goal and the path leading to it, were withheld from the German people. In Germany itself there was a boom; and it was not for the mass of the people to judge whether it was a genuine or a false boom.

When objectionable measures in the sphere of home or foreign policy were taken, propaganda set in, with all its twists and appeals to the instincts of the masses, thus preventing any mental reflection.

When war broke finally out, and after the impressions of the first easy victories had vanished, the people were held together by means of the slogan "carry on till final victory" coupled with an ever increasing terror.

The state was entirely run by HITLER and a number of his leaders. They decided and their decisions were law.

It could be sensed that some thing in their actions was reprehensible, but the knowledge essential for real understanding was lacking. Objections were disproved by means of press and radio. That was too self-evident, was not being said at all.

Thus, in public, Auschwitz and its gas chambers were not mentioned with a single word and neither were the Einsatzgruppen in the East. These were the conditions under which Otto ALBOS lived in Germany.

But in this situation he could at least preserve his personal decency. The fact that he succeeded in doing this, is shown by his conduct in the question of poison gas warfare, the handling of "rescuees" and many other incidents.

It is correct that Otto ALBOS did not refuse to carry out the Government commissions which he received. The suspicions which he should have had with regard to his commissions concerning the secret aims of those in power were not aroused because the tremendous counter-propaganda together with apparent successes, produced in him an uncertainty as to the correctness of such feelings, which restrained his doubts.

In addition, there was the pressure of standing under orders, which since it came from an official office provided also sufficient local protection.

Moreover at that time the ancient principle prevailed in Germany as well as all over the world that, in war-time, one has to make sacrifices for one's country at the front as well as at home. It is only today that the mass of the German people can realize that, according to their actions, those who were in power in Germany, had no right whatsoever to put forward such a demand.

but at that time, Otto AMTOS as much as the majority of Germans, lived according to this motto and considered it their duty to comply with any government order.

Your honors, do you wish to punish him for this error?

Could it not be far better to return such a man to the community for which he has worked in the past and for which he can work once again?

The judgment will have to decide this question.

However, I want to add one more thing.

I have not yet dealt with Control Council Law No. 10 and I have not yet spoken about the justification of this law. I have also not yet investigated here the individual acts of Otto AMTOS as to whether or not they are covered by this law.

The latter I did in my trial brief.

In my opinion, my final plea shows in general that Otto AMTOS has not committed any offense against Control Council Law No. 10.

But above all I trust that this high Tribunal will only consider as real guilt that which civilized mankind regards as criminal guilt against the laws of nature and ethics, beyond the juristic differences between American and German law as to the concept of guilt in itself.

Final Plan A-100S

On such a basis Control Council Law No. 10 is but a framework in which
Germans to-day will judge just like Americans.

Final File #2015

CERTIFICATE OF TRANSLATION

2 June 1948

I, Edith L. STEINER, Div.No. 20 150, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the Final File #2015.

Edith L. STEINER
Div.No. 20 150

Finch Plot Bulletin (Barnish)

Case 6
Defense

FINAL PLEA BURGIN

Military Tribunal No. VI

- Case No. 6 -

Final Plea
on behalf of
the defendant Dr. Ernst BURGIN
in the trial
The United States of America
versus
KRAUCH et al.

submitted by
Dr. Werner SCHUBERT
Defense Counsel
of the defendant
BURGIN

burg



FINAL PLEA BURGIN

Your Honors,

I.

My client and the other defendants in this case have been charged with an offense which I consider the most heinous of all crimes: the planning, preparing, initiating and waging of aggression, in other words an unjust war, a war of conquest. On top of this, the defendants are not even credited with idealistic or commendable motives such as patriotism; it is claimed that greed and lust for power motivated their actions. If such a monstrous charge has been raised against men who were no political leaders, no military commanders nor holders of high government offices, then it is necessary to apply the strictest standards of evidence in order to prove the offense.

In the trial brief para I (p.9), the Prosecution has tried to define the crime against peace. The Prosecution holds that a person commits a crime against peace, if he takes part in the strengthening of the military power of a country, although he is conscious of the fact that the increased strength will either be used in order to carry out a national policy of expansion, or that it is actually used in order to deprive the inhabitants of other countries of their territory, their property or their personal liberty. This conception greatly exceeds the legal definition laid down

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in art. II paragraph 1 a, of Control Council Law No. 10. The Control Council Law mentions the undertaking of invasions of other countries and of wars of aggression as violations of International Law and International Conventions. According to the Control Council Law, a mere threat based on military power is, therefore, not sufficient whereas it would - in the terms of the definition given by the prosecution - be sufficient as such to constitute a crime against peace. In consequence, it must be considered incumbent on the prosecution to prove that the military power of a country was in fact promoted and, in addition, that those who promoted it were cognizant of the fact that it was intended to use the military power in order to invade other countries or to wage war of aggression in violation of International Law and International Conventions. Furthermore, it must be kept in mind that art. II, paragraph 2 f requires that the defendant held a prominent post in the financial, industrial or economic sphere. This restrictive interpretation is the only interpretation by which this provision can be given a reasonable meaning: it is its purport to restrict and limit the types of persons who can be prosecuted for crimes against peace. Otherwise, it could be held in theory that every ammunition worker and practically every person in Germany who did some kind of work during the war, were liable to prosecution.

If this criterion is applied to the activities of the defendant BURGIN, his activities prior to the 1 January 1938 must, in my opinion, being left out of consideration altogether. They are not relevant in the meaning of criminal law, for up to that date BURGIN only held the post of a "Prokurist", which is not a prominent post in the terms of art. II, 2 f, of the Control Council Law. I shall, therefore, deal with the period

prior to 1 January 1938 only in a cursory way. In this connection, I should like to make it quite clear that the turn of the years 1937/1938 marked an important turning point and a caesura in the industrial career of my client.

The evidence introduced by the Prosecution in connection with count I of the indictment - in as much as it refers to the Works Combines Control Germany, so that it seems to have been introduced against my client - included two main subjects, viz. light metals and raw products to be used in the manufacture of explosives. If we keep in mind that the 1st January 1938 is the decisive date line, then the construction of the Alton, Stassfurt and Tautschenthal plants - which pertain to the field of light metals - must as such be left out of consideration in the case of Dr. BULGER, apart from the fact that the post which he held at that time had nothing to do with these projects, and that he had to begin by making himself acquainted with the technicalities of magnesium production which had been completely unknown to him until 1932 in far as the further processing was concerned, he had until 1938 never dealt with anything. - In the field of raw products to be used in the manufacture of explosives, no new plants but only extensions of existing plants were constructed after 1 January 1938.

The fact that Dr. BULGER has contributed to re-armament is, of course, not open to any doubt whatsoever. Neither he nor his superiors, colleagues and subordinates considered this a crime. But it has not been claimed by the prosecution, nor is it probable that Dr. BULGER, of all people, ever obtained special information concerning the intentions of the political leader. Dr. BULGER can, therefore, be found guilty of a crime against peace only if either the general political trend in Germany or the type and amount of the products manufactured in

his plan enabled him to realize that wars of aggression were actually impending, a state of mind which is one of the elements constituting such crime. In fact, both of these two assertions seem to have been put forward by the Prosecution.

In order to prove that not a single person in Germany doubted Hitler's intention of waging a war of aggression, the Prosecution has produced the witness Paul Otto Schmidt. The affidavits submitted by this witness are far from proving that this fact was generally known in Germany. In addition, this witness was forced to restrict his statements considerably under cross-examination, so that his deposition does not amount to any proof at all. In addition, there is another reason why the deposition of a witness of the type of Schmidt is quite inappropriate: in his capacity of interpreter, Paul Otto Schmidt attended practically all discussions between foreign diplomats or other foreign economic or political leaders on the one hand and the German leaders on the other hand; thus, he is at present quite unable to distinguish between those facts which were generally known in 1939 and those which were just known to Paul Otto Schmidt.- It is true that the political trend may have caused much concern to many people, particularly in 1939. Many people felt uneasy and wondered where the course steered by Hitler might lead them. However, neither the German people as such nor the German industrialists -who were not given any special information on this matter- really know what was in prospect, neither did they know that Hitler was aiming at conquests, except for those few who obtained direct information from Hitler's circle. My client Dr. BURGIN was in the same position as the masses of the German people. In order to assess the real mood of the German people and the amazement and gloom caused by the military measures taken on 1 September 1939,

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it is important to read the pertinent description given by the late British Ambassador in Berlin, Henderson, in his book "Failure of a Mission"; the impact of his words is particularly poignant for those who experienced these events within Germany. I quote from page 287 sq.:

"...I am glad to take this opportunity to bear witness to the fact that throughout those anxious weeks, and up to the very end, when we crossed the German frontier, neither I nor any member of my staff was subjected at any time to any discourtesy or even a single gesture of hostility. It was a very different era of war from that of August 1914. ... My impression was that the mass of the German people - that other Germany - were horror-struck at the whole idea of war which was being thus thrust upon them. ... But what I can say is that the whole general atmosphere in Berlin itself was one of utter gloom and depression. ..."

Similarly, Dr. BUECHER, too, was surprised and shocked by the outbreak of war, which he had not foreseen. The majority of the German people had not foreseen it either, all the more as the Führer of the German people himself had been a combat soldier in the first world war, and as he had often stressed that he had experienced the horrors of war himself.

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In the indictment, the Prosecution has emphasized that the defendants were members of the NSDAP without exception. Apparently, this implies the conclusion that the defendants agreed with the political aims of the National Socialists and that they were willing to put up with war - and even with a war of aggression - provided it promoted the aims of the National Socialists. The members of the staff of the Prosecution did not live in Germany during the National Socialist regime. Thus, they cannot realize how easy it was to become a party member and how difficult it was - in particular for holders of ranking political or economic posts - to evade joining the party. Only very few have managed to do so. In 1937, Dr. BUEGIN made up his mind to join the party, because he felt that as a party member he would have a better standing vis-a-vis the representatives of the party, the German Labor Front and other organizations with which the I.G., in its capacity of an employer, was confronted all the time and which were often not easy to deal with. Actually, Dr BUEGIN, by joining the party, reached his aim, and obtained a stronger standing vis-a-vis the party authorities. A number of affidavits strongly testify to the fact that he never was a National Socialist in his heart.

I have shown that the political trend as such did not enable BUEGIN to realize the real aims of the political leaders. It remains to ascertain whether he could obtain such knowledge from the type and amount of the products manufactured in the plants in his charge. Now, the set-up

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was such that the plants Bitterfeld and Wolfen did not produce finished products which could be used as such by the armed forces; they only produced semi-finished and similar products, the final purpose of which could frequently not be inferred. For this reason, the Prosecution took such pains - particularly in cross-examination and in the rebuttal - to prove that the final applications of these products were known to the I.G. and to Dr. BURGIN in particular. I never denied that this was partly the case. When producing evidence on behalf of my client, I have myself discussed a large number of applications, in particular of light metal products. It is obvious that light metal can be used in commercial air planes as well as in bombers or fighter planes, in equipment for merchant ships as well as for warships, for civilian as well as for military optical purposes. A large number of similar examples could be given.

A. The prosecution has stressed certain applications of light metals with particular emphasis. In my opinion, it is sufficient to discuss two of them, though even they do not seem to be essential or decisive. These two products are textile cartridges (Textilhucleen) for incendiary bombs and light metal components of air planes. As for as other military applications such as wheels for guns, superstructures for destroyers etc. are concerned, the quantities proved by the evidence are so negligible that it seems unnecessary to discuss them in detail. The bombers carrying magnesium wires which are mentioned in the indictment belong to the realm of imagination.

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CERTIFICATE OF TRANSLATION

I, Ernest Schaefer, ETO No. 20165, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of document Final Plea BUEGIN.

Ernest SCHAEFER
ETO No. 20 165

As for the textile cartridges (Textilbulleten) are concerned, the Prosecution points out that they were used for a purpose which the Prosecution obviously considers very impressive, because, on the one hand it was recognizable and actually well known to the general public at Bitterfeld or even according to the testimony of the witnesses, and because, on the other hand, an iron very hard and perhaps be justifiably regarded as a weapon of attack, though even the defendant made weapons of attack.

If one considers the later statistics concerning the production of these textile cartridges (see Exhibit 83) - I wish to stress explicitly that no incendiary type, but only normal cartridges were manufactured at Bitterfeld - , one is struck with the development during the years 1934 to 1937, in which the production went up by leaps and bounds. In 1938, when BUCHNER took over the direction of the "Friedrichshagen" factory, hardly any textile cartridges were manufactured, during the years 1939 and 1940 none at all. Only during the year 1941 production was again resumed, and the manufacture during the years 1943 / 1944 did not, on an average, amount to more than 8,2 % of the entire German production. Thus, the whole scope of this matter was not of great importance, on no account was it important during the period that Dr. BUCHNER was Vorstand and so much responsible for the production during these years it only amounted to 8,2 % of the entire production.

The aircraft industry certainly used very small quantities of light metals. That German air force was being built as was known to every child in Germany, at any rate after 1935. In order to be able to draw conclusions from the structure of this air force concerning the nature of its intended war, one would have had to know the extent and the nature of the production, and in particular the type and the number of individual types produced.

In Exhibit 1970, which was submitted to the witness for the defense, VITCH, during his cross examination, the Prosecution has attempted to prove that BUECHER had such knowledge, at any rate concerning one part of the field in question. The witness for the Defense, TEBER, however, made it convincingly clear from the document itself that it was never forwarded to BUECHER. Thus it has not been proved that BUECHER ever took note of this Exhibit 1970, in which the production figures for certain types of aircraft which it was intended to manufacture during the years 1938, 1939 and 1940, were mentioned. Actually I should almost wish that BUECHER had seen this document at the time; for the production figures mentioned therein are so surprisingly low that nobody could ever have drawn any conclusions from this kind of production with regard to Germany's alleged plan of creating for herself an overwhelming airforce sufficient to wage a war of attrition against the whole of Europe.

After they had not succeeded in furnishing the necessary proof with the help of Prosecution Exhibit 1970, the Prosecution attempted to prove with the help of an affidavit (Exhibit 2251), submitted during the rebuttal by their collaborator, Dr. Hans KLOTZSCH, that everybody in Germany could form a picture of what aircraft were being constructed, simply on the basis of the publications about aircraft and types of aircraft which were accessible to the general public, and that the producers of light aircraft would have been in a position, with the help of these publications and by using a construction chart for aircraft engineers, to calculate the extent of the aircraft production without further ado.

I should like to say to the affiant, Mr. WITTSCHN, the words: "O si tecuisses". The expositions are rather phantastic in themselves, but if one then looks at the publications on which Mr. WITTSCHN has based his potential calculations and discovers even at them, for instance, the cigarette picture service of Herr Philip BEITZ, which was intended to satisfy the longing of youngsters for beautiful, glamorous, colored pictures of aircraft, one must ask oneself: Does the Prosecution really believe that the Reich Ministry for Aviation which, as has been shown in this trial, referred to put their secrecy stamp on 99 documents too many, rather than on one too little, would have permitted collections concerning military aircraft from which an amateur, such as Mr. WITTSCHN, and thus naturally the Foreign Intelligence Service as well, could have gathered without difficulty what the actual state of German aircraft production was at any given moment? The formulation of this question implies an answer in the negative.

One must always remind oneself that 70 % of the I.G.'s production of electron metals at Bitterfeld went out as semi-finished products, and 30 % as semi-finished products, even at which were very crude semi-finished products such as blocks, bars etc. The pig-metal was mostly delivered to the foundries. What happened to it there was only known to the I.G. if their customer informed them about his manufacturing progress. But he was not entitled to do this if it was a question of military contracts.

Neither should it be forgotten that up to 1939, at least, there was a considerable amount of civilian business done in the magnesium field.

When the agreements concerning the new magnesium plants at Jaken and Stassfurt were concluded they included provisions according to which deliveries to third persons, i.e. not to the Reich or to agencies designated by the Reich, entailed the payment of a license fee to the Reich amounting to 5 - 15 Pf. per kg of metal. By reason of these provisions a total of 7 1/2 \$,6 millions was paid to the Reich, which corresponds to 96,000 tons of metal if one assumes an average fee of 10 Pf. per kg. A considerable amount of this was probably delivered for civilian requirements. An amount of about 20,000 tons of aluminum per year were earmarked for the Volkswagen work alone. That is why the plant at Stassfurt was started at the end of 1938. Also there was a considerable amount of exports up to 1939.

The development of magnesium in Germany had been taken up on an ever increasing scale since 1934. This development might have perhaps struck the persons concerned if the same development had not taken place at the same time in foreign countries. In 1934, i.e. the year in which the Jaken plant was being built, plants for the manufacture of magnesium were also started in France. In 1935, when the plant at Stassfurt was being built, the constructions for a large magnesium plant at Clifton Junction were simultaneously started in England. The officials of the IG who concerned themselves with magnesium thus saw the same interest in other countries also, and watched a development which was similar in principle. That the development in Germany should be on a larger scale could not surprise anybody, as Germany was after all the country where the aluminum had originated, and she was forced by reason of her well-known shortage of raw materials to develop productions which were at that time of no interest to richer countries.

The only one of the large industrial countries which did not participate in the development of magnesium were the United States of America. This fact has been used by the Prosecution to incriminate the I.G. and they hold the I.G. responsible for it. As a matter of fact the I.G. made the very greatest efforts in order to interest the industry of the U.S. in magnesium; as early as 1931 an agreement between the I.G. and the largest producer of aluminium in the U.S., ALCOA, had been concluded, the so-called ALCOA-agreement, which aimed at pushing the development of magnesium in the U.S.; later on, too, everything was done to keep interest in America alive. Dr. BURGIN was not concerned with this development up to 1938, but during the time which followed he tried to bring about a frank and honest exchange of experiences with all foreign countries, amongst them the U.S.; he did this even after the war between Germany and Great-Britain had broken out. The Truman report which was offered by me as defense document exhibits 33 closes up the matter completely. There can be no question of the I.G. having held up the development of magnesium in the U.S. But the industry of the U.S. at first showed only very little interest for the new material, and it was only during the war that the initiative of the Government made good what the industrialists of the U.S. had previously neglected, in spite of the fact that the I.G. had placed every technical opportunity at their disposal.

2. Another field in which the Prosecution tries to connect I.G. Bitterfeld and Dr. BURGIN with preparations for war is the field of the so-called raw products to be used in the manufacture of explosives (Sprengstoff Vorprodukte). In this connection, the Prosecution has submitted a wealth of material and enumerated a confusing variety of chemical compounds. In this plea, I shall only discuss the most important items.

1) The Methyl- and Fertilizer Plant in Welfen (the so-called "A" and "B" Plant).

This installation belonged to the Reich. It did not belong to the I.G.; it was only managed by I.G. on behalf of the Reich. This plant was projected and constructed before 1938, and it was before 1938 when Methyl production in the plant started. All this happened before Dr. BURGIN became a Vorstands member. Prior to his appointment as a Vorstands member, Dr. BURGIN did not handle this matter at all, because it concerned organic substances.

2) The Gaseous Plants in Welfen and Döhrte.

These plants, too, were not I.G. installations, but installations belonging to the WFO, in other words virtually owned by the Reich. These installations, too, were set up before 1938. They were projected within the framework of a general drive ordered by the authorities and aiming at an increased Gaseous production.

3) The Nitro-plants, i.e., plants for the production of highly concentrated nitric acid in Döhrte and Welfen.

These were again TPO installations, i.e. virtually Reich installations constructed before 1938. In the beginning, the Wolfen plant was subordinated to the Sparte I Oppau; it was only later that it was merged in the Sparte I Control Germany of which BURGHE was in charge.

4) Wolfen plant producing sulphuric acid from gypsum.

Of all the installations mentioned, this is the only one which was owned by I.G. It was mainly constructed for the purpose of producing sulphuric acid necessary for the production of cellulose in the Wolfen film plant. This plant producing sulphuric acid from gypsum was not suitable for Oleum production, i.e. for the production of explosives. This installation, too, was established before 1938.

The other chemical substances mentioned in this connection are less important; I have dealt with them, therefore, only in my Trial Brief.-

To sum up, the following explanations pertain to all the substances mentioned:

- a) I.G. as such did not produce explosives.
- b) Most of the material, mentioned above had been produced by I.G. at all times. It is true that after 1933 the production of part of these materials was increased. In as much, however, as I.G. was not satisfied that a sufficient market for the increased production was assured for the future, I.G. did not construct new extensions of its own; it was left to the Reich to con-

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struct them at its own expense. I.G. only undertook to manage these Reich owned plants on behalf of the Reich.

- a) The raw products produced by I.G. in order to be used in the manufacture of explosives were delivered to the plants producing explosives or semi-finished products for explosives. The technical managers of the individual departments did not know the total amount of these deliveries. It is possible that the sales departments were in the position to estimate this amount approximately. At any rate, Dr. BURGIN had no information on that matter.
- b) Explosives in any shape or form can be used in defensive warfare as well as in aggressive war. They are used by every army throughout the world. In consequence, Dr. BURGIN was not in a position to ascertain how the output would eventually be used. In addition, it must be kept in mind that if he was able to form a comprehensive estimate at all, this applied to his own restricted sector only, not to the total output of the German production of raw products to be used in the manufacture of explosives. A considerable number of witnesses produced by the defense have stated that the ammunition stores of the German army were in 1939 not sufficient by far in order to wage a lengthy war or a world war.
- c) The projects for all plants concerned had been agreed upon between Dr. FISTOR - BURGIN's predecessor - and the Army Ordnance Office at a time prior to the

date when Dr. BUECHIN was appointed a Vorstand member. Construction, in some cases even production, had also been started before that time.

How is it possible to use these developments - which were already in full swing when Dr. BUECHIN became a Vorstand member - in order to concentrate the responsibility on Dr. BUECHIN? How can the restricted knowledge which Dr. BUECHIN, once appointed Vorstand member, acquired by the facts, have enabled him to acquire the additional knowledge of the fact that this development could not but result in a war of aggression - a state of mind without which he cannot be found guilty?

The further charges raised by the Prosecution in connection with the hoarding of war material and with espionage have so clearly been refuted by the evidence produced by the Defense, that it seems superfluous to discuss them in the Plea. I have discussed this matter fully in the Trial Brief.

C. The Prosecution has also tried to establish a certain connection of BUECHIN with the Four Years' Plan. Actually, this connection consists only in the fact that BUECHIN provided the office of the Four Years' Plan with certain statistics on chlorine production; these statistics were available to him in his capacity of Head of the so-called Chlorine-WO (sub-committee) of the I.G. No close connection with the Four Years' Plan ever existed. In particular, Dr. BUECHIN had no information concerning the overall planning which was projected and partly carried out by the Four Years' Plan.

CERTIFICATE OF TRANSLATION

27 May 1948

I, Julia Kerr, WFO 20185, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of document Final Plea BUSHIN.

Julia Kerr

WFO 20185.

D. The following can be said as a summary:

The economic preparation of industry for a possible war took place in Germany just like in any other country which had an Army. The part which Dr. DURGIN played in this connection and his participation was a very small one. It was practically limited to the period from 1 January 1938 onwards. Especially in Ditterfold, there were no great changes from this time on until the outbreak of the war. Large-scale extensions were carried out again only after the begin of the war, and all these installations and extensions were constructed under the pressure of the official authorities, against which every opposition would have been of no avail and dangerous.

There exists no reason for the assumption that Dr. DURGIN did know about the secret aggressive intentions of the political leadership. He could not arrive at such a conclusion, from the statement which the political leaders themselves uttered, who on the contrary again and again emphasized their willingness to maintain peace; nor was he able to conclude that from the entire political development, which, it is true, became more serious during the years 1938 and 1939, but which was nevertheless accompanied by the leadership with peaceful statements. Finally he was not able to conclude that from the kind and extent of the production because it could simply be used for armament as such, but did not contain any fact which would show that it could or was to be used in a war of aggression. On the other hand, however, there were many other things from which Dr. DURGIN believed to be able to see that in any case the management of the I.G. and also the governmental offices consulted in this connection had in mind a peaceful development. One of these things was the extensive exchange of experience with foreign countries in fields which were of special importance in case of war

Final Plea BURGIE

Further there were the construction of installations for the production of magnesium with I.G. licenses in England and France, and even in spring 1939 there was the conclusion of an agreement on a patent and experiences pool with Belgium, England and Czechoslovakia in the field of electrolysis through the chlorino alkali process; Dr. BURGIE himself participated in the conclusion of this agreement and he reported on it in the witness stand. All these measures required the permission of those German authorities which handled armament matters, and this permission was granted by the authorities without conditions. This certainly did not look as if Germany would intend attacking its neighbors with force of arms during the coming months.

The prosecution let it appear as a decisive motive for the I.G. that the I.G. wanted to profit by the war. In this connection it does not take into consideration that all the men here in the dock already witnessed the first world war and gained the experience that at the end even the victor does not profit anything from a large-scale war of long duration, but that the consequences for the conquered are catastrophic. Nor is it possible to coordinate the motive of profiteering by the war with the fact that the I.G., as we saw, did not construct installations for which they did not expect a permanent civilian market, on their own. If it wanted only to make profits, it would have had to build and operate these very installations because otherwise it would have permitted the state to take the best chances of profit out of their hands.

Final Plea BURGIS

In conclusion of my statements about this decisive and important count of the indictment I would like to ask the Tribunal with the greatest emphasis to pay special attention to the following two considerations:

- 1.) The men who are in the dock here have done exactly the same thing as their foreign colleagues; just like the entire German nation, they were misused by the political leadership. The only reproach which perhaps could be made to them, would be that they did not have sufficient political foresight. They do not stand alone. This reproach could be made in the same manner, even more justly to a number of foreign statesmen in high and highest positions, whose special field of work is the knowledge of diplomacy of other countries and who were also fooled by HITLER.
- 2.) The prosecution emphasizes that many useful inventions originated from the I.G. The witness for the prosecution, Elias, has stated expressly that nearly all the products which were mentioned and played a part in this trial, can be used in peacetime as well as in wartime. The American Military Tribunals in Nurnberg are of the opinion that civilians, i.e. such persons who neither participated in the Military nor the political leadership, can be made personally responsible for offenses against International Law.

Final Plea DUROG

I do not want to argue here as to whether this opinion is correct. However, I would not like to refrain from pointing out the great danger which would result for the freedom of research in case of a possible sentencing of industrialists, and in particular of technical and scientific researchers. The freedom of research only is the guarantee for human progress. Therefore your decision, Your Honors, should avoid the danger of doubt with which every researcher would be confronted if these defendants would be sentenced: Am I permitted to continue to work in my special field of research or does it make me already a criminal against peace? Whether and which practical consequences will result in the future from the Nuremberg theory of the responsibility of the individual in International Law is a question which is still open. In the field of research, however, there exists the danger of very negative consequences for the entire humanity.

II.

In count 2 and 3 of the indictment, Dr. BURGIS is being connected with war crimes and crimes against humanity in the field of robbery and plunder as well as of slave labor. The accusations of the prosecution are based on the Control Council Law No. 10 and on some regulations of the Hague Rules on Land Warfare. There is no doubt that the Hague Rules on Land Warfare were violated by both sides during the unheard-of events and the unique social changes of the last war; such violations are committed in every war. In my opinion, it is not the task of these Tribunals to sentence every such violation, even if they are only chance single events or exceptional cases. The wording of article II, 1 b and c of Control Council Law No. 10 presupposes a larger extent and a certain system in committing the offenses. According to that, not every mistake, although it may have been highly deplorable in the individual case, should be punished, but only those violations which, in a larger frame, can be considered as war crimes and crimes against humanity. The titles of the indictment, such as "Robbery and Plunder" and "Slave Labor" also point to this fact. The judgment in the Justices trial (case 3) explicitly emphasizes this idea in connection with the crimes against humanity by the following words (transcript page 106 46)

....."We hold that crimes against humanity as defined in CC Law 10 must be strictly construed, to exclude isolated cases of atrocities or persecutions whether committed by private individuals or by governmental authority."

Final Plea DUBOIS

Therefore I request the Tribunal to judge especially this count of the indictment in a generous way, remembering the old Roman legal sentence: "Minime non curat praetor."

1) In the count of the indictment "Robbery and Plunder", Dr. DUBOIS is being connected with 2 issues.

- a) The first issue concerns the trip to Poland which Dr. DUBOIS and the defendant WURSTER made in autumn 1939 for information purposes. It is not quite clear what the prosecution tries to prove by submitting this material. It has been ascertained that during this trip only one inspection has been carried out, nothing has been taken away and there is no proof whatsoever that the trip to Poland resulted in any consequences involving transactions of property. The trip of Dr. DUBOIS, in particular, touched a field and concerned Polish enterprises which had no connection with the Lurata, /Wola and Wianica cases, in which the I.G. was interested later on. Therefore the facts in this issue do not constitute any offense punishable in criminal law.
- b) The second issue concerns an apparatus from Slysia, in Poland, which I.G. had purchased from the OEH. The facts of this case are completely unclear. The prosecution documents did not show, and neither could the defense clarify where the OEH got hold of this apparatus and whether in accordance with the Hague Rules on Land Warfare the OEH had the right to dispose of this apparatus.

Final Plea MURKIN

For is there any proof of the fact that in this case in Poland the I.G. showed any activity or initiative at all. The only thing which has been ascertained is that the I.G. has purchased the apparatus from the OEH, an apparatus which originated from somewhere in Poland, apparently from Blyzin. No proof was submitted that the OEH has robbed or looted this apparatus, and even if one would assume this most serious case without having a shadow of proof for it, in this case a possible robbery or plunder of the OEH would have been finished and concluded before the I.G. received the apparatus. Thus, even then it would not have been possible that the I.G. would have participated in a possible crime of robbery or plunder committed by the OEH.

Now in this case, the prosecution objects especially to the fact that the I.G. issued invoices on I.G. invoice forms. Nothing can be easier explained than this process. The I.G. Bitterfeld had not yet received an invoice for the apparatus from the OEH. The individual plants which received parts of this apparatus had, however, to show in their books which were kept according to regulations a sum equal to the purchase price which was still open. For this purpose I.G. Bitterfeld issued formal invoices for the individual plants. It is to be assumed that this matter was later settled properly in the usual commercial way by final accounting in the books and by payment.

Final Plea DUBAGIN

c) In order to prove an act of plunder in Russia the prosecution submitted several events which took place in a "Soda-and-Aetskalkalien Gatt GmbH" in which the I.G. had a small share. I have proved that this company was founded exclusively to administer advice and take care of plants located in Russia which were concerned with work in this field. In accordance with this task the company did only bring material to Russia but did not remove anything from there. The result of this action became apparent when the firm was liquidated. Not only did the company reap no profit during its two years of existence but it lost the major part of its capital. This is truly a good example for robbery and plunder.

d) The biggest issue with which the prosecution connected Dr. DUBAGIN is the issue of Norway. The prosecution did not make it clear on which special facts it based its indictment.

The following events can be excluded as irrelevant from the very beginning:

- 1) The extensive plans, which were submitted in this connection, of production on a large scale of light metals, especially aluminum, in Norway, because these plans were not carried out at all under the participation of the I.G.
- 2) The founding of the Nordisk Løtmetall as such, because nobody was deprived of anything by this founding;
- 3) the extension of the installation of the Nordisk Løtmetall because, even if these installations

Final Piece BURGIS

were constructed with excessive expenses due to wartime conditions, the I.G. did not gain anything for which the Norwegians had to pay.

Theoretically only the following facts could be of importance:

- 1) The purchase of the French subscription rights of the Norsk Hydro by the I.G. ;
- 2) The taking of the production of the newly-founded Nordisk Løtmetall;
- 3) the removal of apparatus after the Nordisk Løtmetall had been damaged by bombs.

Now, if one considers these events, it has to be noted that to begin with, Dr. BURGIS had no part in the purchase of the French subscription rights of the Norsk Hydro. Production of the Nordisk Løtmetall which the I.G. could have taken over was not started at all. The removal of apparatus after bomb damage had been inflicted, to begin with, was brought to Norway by German partners of the Nordisk Løtmetall, was neither ordered nor carried out by the I.G., but by the Reich Ministry of Aviation. In spite of the opposition of the I.G. this removal was finally carried out by force and in this connection the major part of the removed apparatus remained in Norway proper. Only a small part of it reached Germany and a still smaller part the I.G. in Bitterfeld.

Now, does this last case contain facts which would warrant a charge of robbery and plunder in the sense of a war crime ? One should consider the legal position. The I.G. had a share in the firm Nordisk Løtmetall.

Final Plea REBAGIS

CERTIFICATE OF TRANSLATION

27 May 1948

I, S.A. REBAGIS, Civ.No. 120-20 983, hereby certify
that I am a duly appointed translator for the German
and English languages and that the above is a true and
correct translation of the original document.

S.A. REBAGIS
Civ.No. 120 20 983.

The substratum of this participation, namely appliances which were of German origin, was brought, under the pressure of the Reich, among other places also to Bitterfeld, but most of it has remained in Norway. Even after the removal a valuable share of the I.G. in the remaining appliances was preserved. This share has been expropriated without indemnity after the war. Thus Norway, which through Norsk Hydro had contributed only one third to the establishment of the Nordisk Løtmetall, has received values exceeding considerably the value of the original investment. What permanent value for the Norwegian economy the plant in Norway represents will not be shown until later, when the installations of the Nordisk Løtmetall will be operated; this was done partly this year. Thus Norway gets a modern light metal production which it was lacking until now. It is obvious that Norway was not robbed or looted, in fact it has become the *"tertius gaudens"*. Therefore there can not be any question of robbery or looting and it is significant that the prosecution has been unable to submit even one affidavit of a Norwegian which would support the charge as to robbery and looting.

2) The last count concerns slave labor. First, there is the question which facts are punishable at all from this point of view. Art. II, 1 b (war crimes) quotes as special examples "deportation of the civilian population of the occupied territories for slave labor or other purposes, or the use of slave

Final Plea BIERGEN

labor within the occupied territories". There is no proof that Dr. BIERGEN or the I.G.Bitterfeld participated in the deportation of the population of the occupied territories for slave labor. Not until during the rebuttal has the prosecution produced as exhibit Z173 a letter of the I.G.Bitterfeld to the works- and division chiefs, according to which Dutchmen after having terminated their period of work could be again conscripted in Holland for compulsory emergency service. This document, however, does not show whether this possibility was used at all and Dr. BIERGEN also did question that seriously on the witness stand. The fact that workers on loan were employed in Bitterfeld is also no proof of a deportation, since there always have been workers on loan. Therefore there is no evidence that the I.G. Bitterfeld cooperated in the deportation of the population of occupied territories for slave labor, particularly that Dr. BIERGEN participated therein or knew anything about it.

If the prosecution would claim that the employment of workers hired involuntarily is generally a violation of the Hague Rules on land warfare and a war crime, then every German employer is liable to punishment since everyone had foreign workers and it is impossible to find out today which foreign workers came voluntarily and which ones under coercion. At any rate the defendants may plead the state of necessity which applied to all of them and which was recognized in the Flick trial as a defense for the defendants. No German employer could refuse the assignment of foreign workers during the war

Final Plea BURGHE

without incurring the most serious personal danger, since thus he could not have fulfilled his obligations of deliveries, and would have lost at least his liberty or perhaps his life for committing sabotage. An employer who got foreign workers assigned for employment had in such a situation no choice; it was only his moral and possibly his legal duty to alleviate the lot of these foreign workers as much as possible and not to put them into a more difficult and unpleasant situation by improper treatment.

Therefore this is essentially a problem of treatment of the foreign workers right on the spot. The Control Council Law quotes murder and mistreatments as examples of punishable acts.

The prosecution obviously wants to claim that murders occurred at the I.G.Bitterfeld. In this connection the prosecution put forward two cases, first the hanging of 5 Russians and, second, the shooting of an Eastern worker by the plant police.

The evidence has proved irrefutably that the IG had nothing whatsoever to do with the most unpleasant incident of the hanging of the Eastern workers. These were not members of the IG personnel but Russians who were brought by the Gestapo from other camps and regions and, in order to deter the IG Eastern workers, were hanged in front of their camp. The I.G. did not aid this in any way, it even refused aid in spite of the more and more urgent requests of the Gestapo, whereby witness Dr. Lang exposed

Final Plan BURGON

himself to great difficulties. Although this incident is most regrettable the IG must decline any responsibility for it; it could not prevent this incident. It certainly would have gladly avoided this incident in the interest of preserving peace among the workers, and of good relations between the plant and employees.

The report about the shooting of an Eastern worker in 1942 shows that the plant police arrested the shooting because the respective Eastern worker tried to avoid an ordered control. Insofar the plant police acted as a police agency and not as an employee of the I.G. If the plant police performed police duties it was not subordinate to the I.G. but to the State Police authorities. The whole incident was reported subsequently to Dr. BURGON who was on a trip at the critical moment. Therefore BURGON could not have prevented the incident; after the incident he could not do anything except suggest an investigation. The plant policeman concerned had acted on the ground of directives which were not issued either by the I.G. or by Dr. BURGON; they were issued by superior police authorities. Also in this respect there is no connection between the act and the behavior of Dr. BURGON. Dr. BURGON cannot be incriminated in any way.

The prosecution obviously wants also to claim that maltreatments of foreign workers occurred. The only evidence produced to this effect is the affidavit of a French worker René Balandier. I regret that the court itself did not see this

Final Plea BURGIN

witness but had to depend on a reading of a commission record in order to form a picture of the cross-examination of this witness. Balandier was a witness who very obviously was more interested in incriminating his former employers than in sticking to the truth. Already his affidavit shows a tendency for untrue generalization. It is difficult to catch a witness who decided to say nothing favorable; this, however, has been done with Balandier in two cases:

Witness at first denied that he had received special leave pay at any time; he added without being asked that none of his fellow-workers had received such pay at any time either. Then the contrary was proved to him by a receipt signed by himself he confined his testimony claiming that he could not remember it any more. Allegedly he had signed the receipt without knowledge of its contents. Thus he only tries to cover his unconvincingly false testimony by something seemingly harmless. But not only in this case did Balandier tell an untruth, his testimony about the alleged several hangings in the Russians' camp is not correct either. He had to admit himself that he had seen only once such an execution. He based more far-reaching allegations on the fact only that he had supposedly seen crowds before the Russians' camp, a special sign of this witness' veracity.

At another point an objective incorrectness can be proved

to Balandier, leaving out the question whether he acted in good faith. He complains in his affidavit that French T's were employed in the production of war material (powder). But powder, i.e. powder for ammunition, was not produced in Bitterfeld at all. In fact chlorates were produced which, though they were supposedly used by the French Navy in the form of perchlorates as explosives during the last world war, were used in Germany besides many other uses as explosives only in potash mines.

Balandier's statement in his affidavit and his testimony in cross-examination are viewed by the defense with the utmost mistrust. He is a definitely unfriendly witness and in several points he was not very particular about the truth. No essential weight can be attributed to his testimony. Many of his complaints concern effects of official directives which the I.G. could not change; thus e.g. regulations about leaves, travel restrictions for foreign civilian workers, treatment of Eastern workers. Some concern the effects of cohabitation of so many people under restrictions resulting from war, e.g. vermin, which was time and again exterminated but could be avoided only if the camp inmates behaved adequately; also uncleanness in the barracks or in the sanitary installations, and the like.

In opposition to this affidavit which indulges downright

in painting in black colors, the defense succeeded, in spite of the most serious difficulties, in getting various affidavits of foreign workers which present an absolutely different picture of camp conditions. I refer with special emphasis to the defense affidavit Lafargue (Guergin exh. 96) who justly stresses the point that the Nazi tendency was a cruel one, but that the I.G. time and again did its best to alleviate the lot of its foreign workers and to put them on an equal footing with the German workers in every respect.

I have endeavored to make the evidence for the defense particularly as to this court as extensive and varied as possible. There are among this evidence affidavits of foreign workers, German workers, camp leaders, physicians, persons attending patients, people dealing with food, engineers, and other employees. All these affidavits show that the I.G. took the greatest trouble to improve the situation of foreign workers within the limits of existing possibilities; it had the greatest interest in this improvement since it wanted to get good efficiency from these workers, and it had to get this efficiency because otherwise it would have come into conflict with the Wehrmacht- and political agencies which requested fulfillment of production quotas. I take the liberty to draw the particular attention of the Court upon one of the many exhibits, namely the defense affidavit Ehrlich (Guergin exh. 99), which for good reasons bears the name of the author Ehrlich, which means honest.

Final Plea BUREAU

CERTIFICATE OF TRANSLATION

28 Mar 1948

I, Stanislaw S. FELDMAN, ETO 1043, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Stanislaw S. FELDMAN
ETO 1043.

Final Plea BIERGIN

Ehrlich's judgment is very sober, he emphasizes, however, that everything possible was done and that in particular Dr. BIERGIN advocated again and again a humane attitude towards the foreign workers. Dr. BIERGIN, as chief of the plant, which employed at the end approx. 10,000 foreign workers, could not supervise each of his employees. He could only point out again and again the policy according to which the foreign workers should be treated, he could issue the general directives which should be followed, and he could intervene in individual cases, if they were reported to him. In order to do that in the most expedient manner, he appointed a special "referant" for the camps, who was directly subordinated to him. It is, therefore, in my opinion, not fair to punish Dr. BIERGIN for some individual cases, of which he possibly did not even know, and which he, therefore, could not prevent. May I again refer to the proverb of the old Roman law: "Nemo est curatpater",

The general attitude shown by Dr. BIERGIN in the treatment of the foreign workers, is, however, described by a whole series of affidavits and testimonies. I refer, in this connection, in particular to BIERGIN's continuous fight with the D.F. to his endeavour to turn the camps in Bitterfeld into auxiliary camps, and to the reputation of exemplary camps which these camps actually had acquired and which was confirmed by the witness Nelson (Krouch exn.47), who was a very impartial observer; to the efforts which were made in order to construct a special hospital for the workers, in addition to the existing facilities, the so-called House of Health, which was, after long efforts, finally completed in the beginning of 1945 and at the same moment destroyed by the first

Final Plan BIERGIN

air attack on the Bitterfeld installations. I also refer to the fact that Dr. BIERGIN succeeded in obtaining the same air-raid protection for the foreign workers as for their German comrades, contrary to instructions by the authorities. I refer to the fact that at the occupation of Bitterfeld through the American troops, no serious objections regarding the conditions were made at their visit of the camp, and no serious complaints were made to them by the foreign workers. I refer, furthermore, to the characteristic incident which is stated in my exhibits No. 40, 41: an American officer who had slapped the witness Kresger, whom the witness ridiculed at the entrance of the troops, the expression "slave laborers", apologized on the following day for this action. The American authorities confirmed Dr. BIERGIN in his position as plant manager and he held this position until the forced evacuation, before Bitterfeld was handed over to the Russians. Soon after Germany's collapse Dr. BIERGIN could resume contact with the French firm Puchinoy, as a consequence of which he received a permit to leave Germany and to be employed in a French enterprise; these facts also indicate that he is not guilty of war crimes, in particular crimes committed upon French workers, as this would have certainly rendered impossible such an activity.

Occasional incidents are bound to occur at a concentration of approx. 15,000 foreign workers of different nationalities, under the particular hardships caused by the war. This is inevitable. But the policy of the I.G. and of Dr. BIERGIN was always

a humane treatment, and temporary bad conditions were obviously successfully eliminated, as far as it was possible at all to eliminate them during the war. No serious difficulties which had to be remedied, could have occurred, and there can be definitely no question of a generally infamous and cruel treatment of the foreign workers in Rittersfeld.

III.

The collective responsibility of the Vorstand of the I.G. and, consequently, of each individual member of the Vorstand, will be discussed in a separate statement. I restrict myself here largely to the special situation of my client, Dr. BUECHER was the Director of an important factory located in the province. He had, particularly during the war, more than his share of work and worries through the factory which was entrusted to his direction. He rarely visited Frankfurt and even less rarely Berlin. He participated in the conferences of the ZSA and of the Vorstand. In each of these conferences an enormous amount of work was done, and the individual matters had already been worked out in preliminary conferences, committees, subcommittees, so that there was no more discussion about details. The work was done in an efficient, practical manner and the decisions were reached in an atmosphere of confidence in the integrity of the participants. Each member accepted and carried the responsibility for the department in his charge. His factual handling of the general business of the Vorstand does not offer

Final Plea DUBOIS

any basis for an extension of the criminal liability to individuals, in particular not to a man like Dr. DUBOIS, who directed his plant in the province, at a great distance from the central offices and who was completely absorbed by this task.

IV.

I therefore come to the conclusion that Dr. BUEHRGIN is not guilty under all counts of the indictment. I wish, however, to point out the following:

I already once mentioned briefly the difficulties which confronted the defense in its collection of evidence. These difficulties were particularly great with regard to defendants whose plants were located in the Russian zone. May I refer, in this connection, merely to two examples:

In the affidavit of the former foreign worker Hilda Greuter-Greifelt which was submitted to the Tribunal as my exhibit No. 97, the affiant states that she did not succeed in finding a Notary Public to certify the authenticity of her signature, because, obviously as a consequence of the animosity caused by the foreign press campaign, nobody wanted to certify her signature on the affidavit.

Several former collaborators of the defendant BUEHRGIN, who are still holding their former positions in Bitterfeld, informed me some time ago that I had to abstain from requesting any information in the future. These men were obviously afraid to get into trouble, because of the newspaper and radio campaign in the Eastern zone, in case that they gave any assistance to the defense in Kuermburg by furnishing information or material.

For these reasons the defense was very interested to get acquainted with the material of the prosecution which had not yet been submitted, not for the purpose of learning of any possible secrets of the prosecution, but in order to establish the, in many cases necessary, connection between the prosecution documents and incidents which occurred before or after the

Final Plea BURGHE

prosecution documents, and which were taken out of their proper connection. The prosecution submits, for example, a certain file note for the attention of the defendant BURGHE. It does, however, not result from this, whether, as a consequence, any steps had been taken and in case it was so, which steps were taken. Or a letter is submitted, which is signed by BURGHE and addressed to another member of the Verstand. It does not result from the document why this letter was written, whether any steps were taken as a consequence of the letter, and in the affirmative, which steps were taken. A characteristic example is the file note which was submitted to the defendant BURGHE in cross-examination, which was signed by von der Bey and Pistor, according to which BURGHE was to hold a conference concerning essential and vital plants and armament factories (prosecution exhibit 1959). By a mere coincidence I succeeded to prove through my exhibit No. 100 that actually nothing happened and that neither the meeting nor the conference took place.

The Courts often assume that a document speaks its own clear language. I do not share this viewpoint. Only very few documents have such clear contents that only one interpretation is possible. Most documents may be interpreted in different ways, they must therefore be explained; this interpretation of the documents which the prosecution itself called its main material, has been rendered extremely difficult to the defense through its impossibility to follow the entire course of incidents.

Final Plea ~~EMERGENCY~~

I therefore ask Your Honors to take into consideration this
via major preventing the defense from collecting evidence,
which applied particularly to the defendants from the Eastern
zone, and, in judging documents which have perhaps not yet
been sufficiently explained to the Court and which lend them-
selves to various interpretations, to adhere to the legal axiom:

"In dubio pro reo".

Final File NUMBER

CERTIFICATE OF TRANSLATION

27 May 1948

I, Helene LALLAND, AOC B 398035, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Helene LALLAND
AOC B 398035.

FINAN PLAN, BUAITEFISORT (ENGLISH)

Case 6
Defense

FINAL PLEA

for the

American Military Tribunal in Nuernberg

in the trial

vs.

KRAUCH et al

submitted by

Dr. Hans FLAUGHER

Defense Counsel

for the defendant, Dr. BUNKEWISCH

Nuernberg, June 1948

Teng



Mr. President, your honors!

Perhaps for the first time in history the industry of a conquered nation is standing trial for a living unit as an international conflict. It is difficult to ascertain to what extent the prosecution wanted to indict the whole of German industry. In any case they selected the I.G. Farbenindustrie, an enterprise of the German chemical industry, as the symbol for their purpose. According to the theories propounded by the prosecution I.G. Farben is supposed to have presented its production, its research and development endeavors, its sales organization, its international movements and its trade relations to the Nazi government on silver platters in order to enable HITLER to wage aggressive warfare. This is truly an audacious theory! I.G. Farben is bound up in history and tradition, as well wishes to improve its organization and its position in the world economic structure. Let us study this history.

The prosecution did otherwise. From the millions of letters, cables and records of the I.G. Farben it made a selection of a fraction of a percentage of these documents congruous with its theory and with those painted distorted picture of the I.G. Farben based on preconceived ideas. It was attempted to select to the details the set forth here, which for the I.G. were of completely secondary importance in relation to their overall activities, with political facts and thereby led both the defense and the prosecution through a labyrinth of incomprehensible contradictions and confusion.

Thus it is perforce the task of the defense, jointly with the defendants, to find a way out of this labyrinth in order to acquaint the Tribunal with the facts, and to prove that this distorted picture of the prosecution concerning I.G. may serve to indicate many things, but certainly not the truth or the actual facts.

Final Alloc. MUSTAFISCAR

(Page 2 of original)

From its collection the prosecution has raised an abstract notion of individual charges, and made its work as in so far as it has adopted the view point that each of those on trial here is to be held responsible for such acts as occurred. It has attempted to impose collective responsibility on all of the defendants which is devoid of any legal basis. In order to be able to hold each and every one of the defendants responsible the prosecution must disregard the axiom which is contained even in the indictment, namely that every criminal guilt is an individual guilt. In the course of the trial it must certainly have become clear enough that the division of work in the management of I.G. was so differentiated that it is impossible to hold all the three members and three men holding leading positions in this concern equally responsible for all spheres of work. If the laws relating to stock corporations in the case of a board consisting of many members imply, in everyly defining the spheres of duties, a total responsibility as regards all liabilities, as prescribed by law, only for those duties which the law designates expressly as special duties of the board, then in the case of criminal responsibility an even more critical standard must be applied which requires much greater differentiation with the result that for each of the defendants the extent of his activities, the extent of his responsibility, demands a particular reconsideration. Proceeding from these points of view I shall deal with the allegations and evidence of the prosecution in so far as it falls within the competency of my client, Dr. MUSTAFISCAR.

In 1920 Dr. MUSTAFISCAR entered the services of the I.G. Farbenindustrie and rose from a simple chemist to the position of the technical director of the Leuna-Werke. During the entire period of this professional career he occupied himself with research and development work

(page 3 of original)

with the technical execution and supervision of production tasks as well as technical and organizational problems. His synthesis from 1911 with the chief products nitrobenzene, methanol and petroleum comprised his actual sphere of work. But even in the development and research work in these three fields of synthetic production the prosecution has found an important count for the criminal activities of the I.G. Farbenindustrie and Dr. FRIEDRICH. It is difficult to follow the theory of the prosecution and its charges for these three types of production had been carried out by I.G. even before the technical collision came to power. I.G. developed conscientiously and in accordance with its aim to obtain the products of these three new syntheses and turned them over for industrial consumption, and further worked tirelessly on them in order to develop even more types of products from these chief products which were to benefit industry in general, agriculture and transportation. Such activity is certainly conducive to increasing the industrial might of a nation, but can it be carried out at all with considerations alien to industry, purely political considerations? From the standpoint of I.G. such a view could be carried to its ultimate conclusion, namely that technicians would have to refrain completely from the execution and development of such processes which are capable of increasing the industrial might of a nation. Even this consideration indicates that the premises from which the prosecution has proceeded are erroneous. Such development has taken place in every modern industrial nation of the world. It was not Germany or the I.G. which enjoyed a new production capacities in the last decade in the fields of nitrobenzene and methanol, but foreign countries too, the developments

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of chemical sciences is developed in Germany and constructed their own plants in order to attain autarky. To avoid repetition I do not wish to discuss these two projects and their use any further since they have already been handled as subjects of our I.G. defense counsel for Dr. SCHUBERT. However, in any case I must emphasize for my client is concerned that his duty is the development of these syntheses consisted in creating new types of fertilizers from nitrogen and in the field of industrial synthesis of organic and new fields for the use of these materials in the fields of synthetic textiles and solvents. Dr. HUBER was a chemist, he concerned himself only with the manufacture of products for purely industrial consumption.

The prosecution wishes to infer from this activity of my client a violation of crimes according to my constitution in the world is beyond my power of comprehension.

The prosecution reports facts as critically insignificant that I.G. obtained petroleum synthetically from coal. It submits documents which purport to prove that the development of these processes by I.G. can be traced back to the establishment of alliance with HITLER, that relations had been concluded with the Nazi government in order to enable I.G. to make large profits, so that a new project in the petroleum field had been developed by the I.G. for the benefit to prepare the latter for an aggressive war. The defense's case-in-chief has constructed this in every point of this theory of the prosecution. German production was initiated by I.G. in 1927. Contractions and tensions with the Nazis were started already in 1932.

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under the Prussian Government out of purely economic and commercial considerations and concluded by veteran officials of the Prussian regime. The very opposite to an enrichment of the I.G. was a result thereof. The prosecution was unable to submit any proof to substantiate its theory of an alliance with HITLER. The defense's evidence makes it perfectly clear that the further development of production was based purely on technical results. But the prosecution has even made an issue out of this point. It alleges that Dr. BURTEFISCH and thereby all of I.G. Farben should have recognized the criminal intent of the Reich government to wage an aggressive war through the development of production which was to be carried out under strict secrecy, and which was promoted by the releasing of the license for the hydrogenation process. On this point as well the facts which have been produced by the defense contradict the theory of the prosecution.

- 1.) Up until the outbreak of war the whole of German production was marked for the normal commercial consumption and absorbed by the market without any trouble.
- 2.) This peacetime consumption up to 1939 had more than doubled in Germany in comparison with the figures for 1933.
- 3.) Imports of petroleum in 1939 increased two-fold over import figures for 1933.
- 4.) Domestic production was not sufficient enough to cover even half of the peacetime requirements.
- 5.) German plant installations were not secret. Foreign countries such as America and England participated in the organization of production of synthetics in Germany.

If the prosecution wishes to submit that the activity of I.G. in the field of synthetic fuel production constituted a preparation of military equipment for the conduct of aggressive wars, then in substantiation of its opinion

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it cannot take recourse to the agreement between the Mannesmann Werke and the National Air Ministry concerning the supplying of aviation gas, for the National Air Ministry represented the interests of both civil and military aviation in Germany in the very same manner, and the gasoline supplied was nothing more than a regular basic aviation gasoline for transportation vehicles.

However, the prosecution believes that the production of special products in the field of petroleum is indispensable for the waging of war and that first-class technicians of I.G. in this field first put the Wehrmacht in opposition to waging aggressive wars. No more recent counter-evidence has been presented than that submitted by the defense in opposition to this argumentation. It is quite true that in 1939, too, a sufficient supply of petroleum would have constituted the prerequisite for a war, especially a war of aggression, but even more sufficient quantities of high-test gasolines which are the decisive factor for the striking power of an army, and above all for an air force. Isackton was this high-test gasoline which had been manufactured in America since 1936. The final stage of its production was carried out following an I.G. process which had been given to the Standard Oil Co. in 1935 as a part of an exchange of experiences. The I.G. too could have manufactured this product but it would not have been economical. Germany lacked raw materials which America had in abundance. I.G. was able to obtain this product only through a roundabout process using alcohol. The Wehrmacht learned of the possibilities of the use of Isackton for special aircraft and naturally turned to I.G. with the question whether it could not obtain this product. Dr. BUSTEFISCH had to answer in the affirmative. He emphasized, however, that the production of this product in Germany was not at all economical at that time.

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and that the I.G. therefore would have to refuse to initiate any production of same. Dr. BUETEFISCH believed in a powerful development of technical science and sought other chemical syntheses which would increase the possibility of an economical utilization of this process from German raw materials although Dr. BUETEFISCH was aware to what a great extent aviation gas had already been produced in foreign countries. An Isoketen installation using the alcohol process was not constructed. Could such an attitude of Dr. BUETEFISCH have been possible if he had had the slightest suspicion of a war?

The last but very cogently propounded argument of the prosecution concerning the conduct of the I.G. in the preparation of an aggressive war is the claim that the I.G. through its cartel policy had weakened the potential of its future enemies in the petroleum field in a cunning manner through the withholding of experience which was expressly agreed upon. Since the technical development of the petroleum field and the constant exchange of experiences constituted my client's chief sphere of work and he was held to account directly by the prosecution, I am forced in judging my client to consider his conduct on this point and to select briefly a few striking features from this field.

The I.G. never considered the synthesis for the production of petroleum through hydrogenation as a purely German problem, but as a problem embracing the whole of international industry. In this field the president of I.G., Bosch, and the president of Standard Oil concluded the agreements on the basis of closest cooperation and in this spirit Dr. BUETEFISCH dedicated his work to this aim. The research work was supposed to be of great importance for those very countries rich in natural petroleum.

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An uninterrupted flow of experiences, reports and processes went to the Standard Oil to American from I.G. which did not cease until the year 1939. I.G. could no longer expect to receive any more new processes from Standard since coal liquefaction was non-existent in America and Germany had little or no natural petroleum. Nevertheless, the experiences of the American natural petroleum experts were of great importance; they resulted in ever more suggestions in the oil field and thus this exchange of experiences extended to a close cooperation in the extensive field of petroleum. New processes for the obtaining of lubricating oil, high-speed gas lines, teleoil, isocetane and others were turned over to the Standard Oil, oftentimes before any kind of production of these products had been taken up by the I.G., yes, often even when the process was still in its embryonic stages of development in the I.G. laboratories. There was not a single process in the petroleum field that was developed by the I.G. which was not made available to the Standard Oil during the entire duration of the agreement.

The productive result of this cooperation brought about a natural desire to extend this field of work still further. Thus in 1938 the hydrocarbon synthesis agreement came into existence and in 1939 the catalytic refining arrangement. These agreements were concluded by Germany for I.G. on the instigation and through the initiative of Dr. BUSTEFISCH. Dr. BUSTEFISCH's aim was a further field of technical collaboration for decades to come. Therefore the exchange of experiences was introduced. Even before any kind of production in the field of hydrocarbon synthesis was taken up by I.G. the latest research results in this field were turned over to Standard on Dr. BUSTEFISCH's initiative. In the field of catalytic

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cracking the "fluid catalyst" was turned over even while it was still in its development stage. In July 1939 Dr. BUETEFISCH sent his representatives to America to discuss the new plans for an installation in Hamburg which the Standard and I.G. wanted to develop. According to the new process of catalytic cracking using heavy natural petroleum as a basis which the Standard was to export. In the letter, which had to be sent to the authoritative offices for travel permission, it states that these gentlemen are forbidden to divulge any military secrets. That is the only thing which the prosecution was able to read out of these connecting factors. Construction of this installation was not carried out. The war broke out.

Could Dr. BUETEFISCH have tackled the technical problems and their universal use with such eagerness in this way if he had known of a war of aggression? But Dr. BUETEFISCH still did not believe that a world-wide conflict would break out. Conscientiously believing that an industrial-technical understanding would work against the spreading of a war he held first to the idea of exchanging experiences. He was strengthened in this belief as a result of a conference which his closest colleague, Dr. RINGER, had with Dr. MOHRD in the autumn. The conditions permitting any type of intercourse with foreign countries had been made very strict by the party and military offices. Nevertheless Dr. BUETEFISCH tried to secure permission for the continuance of the exchange of experiences as mutually agreed upon. Germany was not at war with America. He made known his desire at the beginning of February 1940 to General THUMAS, the latter advised him to write a memorandum in such a way that he would receive an affirmative answer from GERRIG to whom he would have to report the matter.

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As Dr. BUETEFISCH in order to obtain the permission, uses the words in this memorandum that only well-known or technically obsolescent processes are to be exchanged, the Prosecution believes itself forced to infer from this sort of tactics used by the I.G. Farben in the cooperation with Standard Oil, and yet clauses which expressly made it possible for each separate firm to consider the particular conditions of their respective countries had been included in the agreements by the contracting parties. This memorandum was written in 1940 during the war. It is here interesting to notice that Standard Oil was the first party that had to impose restrictions on the communication of certain experiences in order not to give away technical information of military importance. Does the Prosecution really believe that American engineers and chemists could have let themselves be taken in by their German partners for years? In the case-in-chief it was demonstrated how the exchange of experiences took place. Every year in the laboratories and in the experimental plants and in the industrial plants of the I.G. Farben highly qualified chemists and technicians from Standard Oil and other partners studied the I.G. Farben procedures and processes for several months. In return the I.G. Farben sent every year similar experts to the States to Standard Oil and the other partners. In view of these facts, how is it possible at all for the Prosecution to assume that the I.G. Farben withheld essential procedures from its partners? The spirit governing the members of the I.G. Farben Vorstand who are the defendants in this trial, in the implementation of the exchange of experience is demonstrated most eloquently by testimonies of the foreign partners. Whereas the Prosecution as already mentioned was unable to state one single concrete case of withholding of experiences in violation of agreements, it was on the other hand possible for the defense, through witnesses whose expert knowledge and competency are indisputable, to establish a proof showing which extremely valuable

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procedures bringing about an actual revolution of the production of the American petroleum industry, were communicated by the I.G. Farben to its partners, procedures which, as it was later found in the course of the development of the entire wartime economy, were of decisive importance.

A defense counsel can outline the over-all attitude and reactions of his client to the High Tribunal only on the basis of individual acts. In my evidence I included excerpts of a lecture given by Dr. BUSTEFISCH on 11 May 1939 before the German Academy for Aeronautical Research on the subject: "On the Chemical Constitution of Fuel and Lubricants". According to the theory of the critical time described by the Prosecution one should have assumed that Dr. BUSTEFISCH must necessarily have tried anxiously to keep the secret of his results and ideas for improvement of fuel. The opposite is revealed by the contents of the lecture. Dr. BUSTEFISCH approaches his problems from the viewpoint of world economy and suggests the cooperation of all experts. This basic attitude of Dr. BUSTEFISCH is, particularly in 1939, further substantiated when as promoter of the Fourth World Petroleum Congress, which by resolution of the nations of 1937 was to take place in Berlin 1940, he in August 1939 accepts the task of delivering a main report on technical problems of the petroleum industry.

Is this action of a man who, as alleged by the Prosecution, was aware of the planning of a war of aggression by HITLER, who is supposed to have participated in a conspiracy supporting this plan, and who for this reason wanted to weaken the war potential of his future enemies?

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If this theory developed by the Prosecution was correct, then in any case, as far as Dr. BUBERFISCH is concerned, proof would have been established that in his field of work he worked against every possible encumbrance that might lead to war with all possible means and tried every way imaginable in order to further the peaceful solution of the problems of world economy in the exchange of technical experiences through understanding and cooperation.

But another thing appears from the lectures and work of Dr. BUBERFISCH. He did not find satisfaction in the highest possible figures of tons or kilograms achieved by the syntheses under his technical supervision, but he penetrated into the depths of the combinations of scientific and technical problems through an arduous study of pertinent literature in order to draw new ideas from these sources and to be able, based on his own abilities, to contribute his share to the working out of new ways for the starting of production of still better and more valuable products for the benefit of the entire human race. Therefore it is no wonder that Dr. BUBERFISCH as a technical expert in his field was consulted by many offices even outside his own firm. Whether it was the international nitrogen convention that elected him president of the technical committee, whether it was the Army, the Reichlitz or Linz plants, the nitrogen syndicate, the Detachement or the Technico Group (Mitsubishi type) that asked his technical advice, it was always technical questions on which he was asked to give advice. I believe that the result of the case-in-chief without exaggeration can be summarized to the effect that in his field of chemical research and development and in the technical utilization of the results of the research work for the production Dr. BUBERFISCH was a recognized authority who did not allow himself to be guided by political points of view in his work,

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but who at all times was governed by practical and professional points of view only.

I shall now deal with Part II of the indictment, in which the I.G. Farben and the defendants in this trial are charged with looting and spoliation as defined by Article II of Control Council Law No. 10.

As to the basic legal questions I refer to the expositions set forth by my colleague SIEGEL in his previous final plea, and I shall here confine myself to the concrete charges preferred by the prosecution in connection with the participation of the I.G. Farben in the Montanale and I.G. and the membership of my client Dr. BUSTAFISCH, resulting therefrom in the liquidation of this company.

In my motion of that time I already explained how the evidence introduced by the prosecution, which it further tried to sustain through documents presented subsequently in the cross-examination of my client, is by no means suited to establish a proof of any violation of the provisions of the Control Council Law by the I.G. Farben or Dr. BUSTAFISCH. In the case-in-chief it was possible to prove that the Montanale and I.G. was founded on the initiative of the Reich Ministry of Economy and already prior to the outbreak of the war with Russia. The petroleum industry of Germany and various banks were called upon the participants. The subject of the enterprise was the taking over of participations and any other commercial activity in the fuel field, in particular in foreign countries. In the company the Reich held a position of absolute predominance whereas the I.G. Farben participated only with 3.75% of the capital stock; as I.G. Farben expert on petroleum questions Dr. BUSTAFISCH.

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must, of necessity had to become a member of the Aufsichtsrat, which consisted of 28 members and already because of the corporational law existing in Germany could by no means claim to be of decisive importance. After the beginning of the Russian campaign the business management of the Montanwerke Gels. A.G. in pursuance of a decree of the Reich Minister of Economy FUNK had to take over special tasks in the occupied Russian territories, of which the Aufsichtsrat was not informed until subsequently at a meeting in January 1942. Quite apart from the fact that according to German law neither the partners nor the members of the Aufsichtsrat can be charged with any responsibility for the said measures, in particular since in this case they were initiated by special official instruction and therefore as the effect of the existing wartime laws had to be carried out, the evidence introduced by the defense has shown that the activity of the Montanwerke Gels. A.G. in Russia did not violate Control Council Law No. 10, that means that in this case this activity constituted neither looting nor exploitation. Therefore in this case my client cannot be convicted of any crime, but not either. When the prosecution in this connection referred to the conviction of Minister FUNK in the IMT Trial, thereby emphasizing that in his judgment mention was also made of his activity in the Montanwerke Gels. A.G., I reply to this that FUNK in his capacity as Minister and because of his special powers held a position fundamentally different from that of the members of the Aufsichtsrat so that no comparison can be made in this respect.

The theory of the prosecution that the taking over of equipment parts from the nitrogen plant was done by the

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nitrogen plant Ostmark A.G., in which Mr. HUETEFISCH was president of the Aufsichtsrat, constitutes looting and spoliation is likewise wrong. My evidence shows in this case in particular that this was indisputably carried out in pursuance of a government order which the company and especially Mr. HUETEFISCH tried in vain to resist. Linz had to cancel its orders on hand with German firms and take over the equipment removed from Blauiskil and assigned to it. The Reich Ministry of Economy or the Wehrmacht undertook the financial settling of accounts with Blauiskil; Linz as purchaser of the equipment had nothing at all to do with Blauiskil but had to resort to the said authorities.

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Under Count III of the indictment the I.G. Farben and thereby all defendants are charged with participation in the government program of slave labor. A number of my colleagues have already in their final pleas stated their views as to the various theses on which the prosecution has based its charges. In order not to succumb to the danger of repetition I shall, based on the evidence referred to, deal only with the question whether my client Dr. EUSTAFISCH can be charged with a responsibility within the I.G. Farben for the utilization of labor. After the detailed explanations of the defense counsel of Dr. SCHNEIDER and the statements concerning the divided responsibility of the Vorstand it has become quite clear that the plant manager was responsible for labor matters and for the social care of the factory staff according to the law for regulation of national labor at that time existing in Germany. In the course of the case-in-chief the plant managers responsible for the respective plants have expressed their opinion on the various counts of the indictment and were able to prove the irreproachable attitude of the I.G. Farben as a whole in all cases. As leading technician of Sparte I Dr. EUSTAFISCH in the course of his 25-year activity was never manager of a plant. I have already in the introduction to my statements described the comprehensive technical tasks which Dr. EUSTAFISCH had to take care of in the various plants. As leading technician of Sparte I he was in charge of the technical management of the Leuna plant, conducted the technical operations at the

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MOOS-HEIM Plant, further he issued the technical instructions for the plants of the Braunkohlen-Benzin A.G., he became technical adviser for the ELITZ and LITZ plants at the request of the stockholders, and besides he was entrusted with the direction of many technical committees and the implementation of the exchange of technical experiences. The main task, the technical management of the Leuna Plant, which was the largest plant of the I.G. Farben concern, did not allow Dr. BUSTEFISCH to visit the other foresaid plants for more than short periods. But the manager of a plant is bound to the place of his plant. He must be near to his plant, otherwise it will not be possible for him to concern himself with the details that are the most essential part of the social care of the factory staff. In all labor questions he must maintain contacts with local authorities. But he must also be familiar with the legal provisions of labor laws and of social care and in particular with the problem of labor allocation in particular the employment of foreign workers and compulsory labor. All these problems did not come within the field of work of Dr. BUSTEFISCH. He was not supposed to deal with them. In order to fulfil his duties he was forced to concentrate entirely on the technical problems, which appear every day in the production of a plant and in the planning of new establishments. But this is not to be interpreted as if Dr. BUSTEFISCH had not been interested in the living and working conditions of the factory staffs. That would be to fail to appreciate his work which again and again took him into the plants in order to intervene whenever difficulties of a technical nature appeared. His loyalty towards the workers is most clearly characterized by the testimony of one of his oldest plant foremen:

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"Foreman and workers soon became acquainted with him and learned to appreciate him for his cordial behavior, because in the plant he never shrank from giving a hand in any work. He was always on the spot whenever there were any difficulties in the plant and in dangerous situations always led the way by setting a good example."

These plain words of a simple man clearly characterize the responsibility of a technical chief. No authority relieves him of this responsibility; he has to bear it all alone, for he issues the orders necessary for the technical management of the plant. He is responsible that the technical planning of new establishments does not result in catastrophes when the plant is put into operation. He is also responsible under criminal law that the enormous powers bound in his chemical plant, confined in containers, pipe-lines, boilers, and reactors do not result in danger to or even loss of human lives. In the utilization of the synthesis in the plants under his care the workers are working with high pressures, high temperatures, and explosive gases. The technical technician is responsible that all rules of procedure of his science be observed in the planning as well as in the plant itself, so that no accidents will occur which due to the special nature of modern large-scale chemistry can only too easily assume the character of a catastrophe. This work also had to be carried out in the I.G. Farben. It could be carried out by technicians only who were fully versed in their specific fields. One of these technicians was Dr. EUSTACE.

The Prosecution was unable to produce one document to show that human lives were endangered in the I.G. Farben through the fault of the technical management. From this it appears what precautions were applied by the technical management, in particular, in this respect, and it is impossible to accuse the management and Dr. EUSTACE in particular.

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of a man who ever risked human lives in the plants. To a technician it makes no difference whether native or foreign, whether free or unfree workers are concerned. Thus also for Dr. BUREFISCH the care of the safety of the worker was a primary one. He did not want to work his men to the bone, but wanted to interest them in their work and keep them interested. It is incomprehensible if now according to the theories of the Prosecution Dr. BUREFISCH should have participated in the enslavement of human beings and through brutal, slave-driving working methods have caused the death of such persons.

As a special case to prove this the Prosecution refers to the setting up of a new plant in Auschwitz. The entire argumentation of the Prosecution with regard to this point aims at using the Auschwitz concentration camp to stage its play; that I.G. Farben is alleged to have demanded the productions of this plant on its own initiative and to have selected the building site for this purpose because there was a concentration camp in this place, the inmates of which it intended to use for the building of the plant.

This theory of the Prosecution should not be allowed to pass without comment. In the trial against Friedrich FLICK at 1. before Military Tribunal IV it was already examined in detail what remained of the alleged initiative of the entrepreneur during the war in Germany. In the case of Auschwitz the findings reached in the said trial appear to me to have a particular relevancy. Thus my colleague KUNZEWARTER stated the following facts:

"Already in the infancy of the Third Reich the changes from the liberal economic body to the state-controlled system of production was completed. By means of this plan the all-powerful National Socialist Government placed private enterprise to a large extent under custody. The final stage of this development was then reached in

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the total wartime economy which left the initiative of the entrepreneurs and freedom of action, placed the production plants completely under the control and dictation of the government and ordered criminal sanctions in the event of violations against this system of production under authoritarian control. The time of the production and construction program was inaugurated when tasks were assigned to plants by government authorities."

The Commodity Exchange Regulations of 18 August 1939 constituted the legal basis for the enforcement of government assignments subject by penalties of imprisonment. The War Economy Decree of 4 September 1939 coined the concept of national economy under war obligation and threatened with death penalty as punishment for jeopardizing the vital supplies of the population as determined by the government. The plant - not the company - is placed at the lower end of this enormous lever as ultimate executive organ. An analysis of the charges preferred by the prosecution in the light of established facts results in the following findings considering the extensive evidence:

- 1.) It was not the I.G. Farben or even one of the defendants that demanded the setting up of a plant in Auschwitz but government authorities (the G.D.) demanded and ordered the building thereof.
- 2.) Supplies were procured and labor made available through government agencies. The I.G. Farben had no influence thereon.
- 3.) Utilization of workers including prisoners was decreed by order of GMLING and DR. L.
- 4.) The speed of the construction work and the deadline for completion of the plants were determined by government authorities exclusively.

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Now under such a system of state control private initiative of the industrialist and therewith personal responsibility could still play a role, remains a mystery. The industrialist was simply pressed into a scheme of state authorities and merely had to execute order.

Sparto I received its construction order for Auschwitz after the place for the construction of the plant had been fixed. The presence of the concentration camp had nothing to do with the planning of the plant of Sparto I, which was started after the order for its construction was received and therefore was never mentioned during the preparatory work. The assignment of prisoners in addition to other workers on the building site developed perforce from orders of AMMER and G. KINO.

The prosecution characterizes the conference which took place at the office of the responsible officer KLEIN as an initiative-action of the defendant BURET-FISCH for the procurement of prisoners as workers for the construction site. This very conference, during which, as was proved by the case in chief, only questions of a general nature and of an informative character were discussed, shows clearly how such an event develops perforce from such orders. Also the discussions, in which Dr. BURET-FISCH did not participate and in which details of the commitment were fixed and agreed upon between the I.G. Office in Auschwitz in charge of the construction and the administration of the concentration camp,

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are only natural consequences of the issued orders and the therein fixed deadlines for the construction project. Neither the I.G. as an entity nor the office in charge of the construction, nor Dr. BUSTEFISCH, cherished the idea of the labor commitment of prisoners. The construction office tried everything possible to obtain other workers. The prisoners were used only, when it was not possible to circumvent the order because there were no other workers available, and even then everything was attempted in order to create bearable conditions. However, the prosecution tries to incriminate the defendants for these very measures which were carried out by the office in charge of the construction in agreement with the management of the I.G., in order to improve the situation of the prisoners committed for work. When the office in charge of the construction set aside barracks at Auschwitz for the accommodation of prisoners, it was never its intention to establish a concentration camp; on the contrary, it wanted to bring about a separation of the prisoners committed for work at the construction site from the concentration camp Auschwitz itself, in this way the prisoners were taken out from the atmosphere of the concentration camp itself, the weary march to the places of work was avoided, and the danger of spreading of an epidemic was avoided.

By taking on part of the food supply for the prisoners working on the construction site, they wanted to have control of their rations, and it was possible to procure even additional rations for them.

The difficult war conditions during the construction project

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in an Eastern territory with a low standard of civilization were considerable with regard to the care of the workers. The office in charge of the construction could not select its workers. It had to take whatever workers were assigned to it. Accommodation had to be found for them. In addition, not only the I.G. alone but for more than 200 other construction firms with their own managements were active at the construction sites. All this has to be taken into consideration before a judgment as to the treatment of the workers can be formed. The prosecution intends to make the I.G. responsible for everything which happened at the construction site and in the living quarters and even in the concentration camp Auschwitz itself, without even trying to investigate to what extent the office in charge of the construction could have been informed about such conditions; and whether it was able at all to exercise any influence on them. Is there any reason prevalent which would indicate that the basic rules according to which the workers at Auschwitz were treated differed from those in practice at other plants of the I.G.? The best and most experienced technicians and construction heads were assigned by the SS to take charge of the construction and the installations of machines at Auschwitz. In line with the I.G. tradition they tried to introduce fair and decent treatment of all workers also at Auschwitz. Every kind of mistreatment, beating or slave-driving to work, was strictly prohibited by orders of the management, i.e. by the office in charge of the construction. It shall not be denied that due to the immense size of the plant site and in view of the great number of workers assigned to it, some abuses may have occurred. Such incidents cannot be avoided at construction jobs of such a size. However, if such excesses had occurred systematically or were committed habitually and if this would have led to unbearable conditions at the construction site, then they would have been stopped.

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at once by every agency of the I.G. which would have learnt of them. The defense's case in chief has proved that the local management or office in charge of the construction energetically intervened in any single case of an excess and took care of its redress.

It is not my duty to dwell here on every single charge of the prosecution. It was not a part of Dr. BUSTEFISCH's duties to supervise the construction or machine assembly and to supervise the drafting and execution of directives concerning the treatment of workers. This clearly belonged to the sphere of duties of the local management. Dr. BUSTEFISCH did not hire or fire a single worker during the time of his activity of more than 25 years. He had no disciplinary authority and was therefore not entitled to issue directives concerning wages, food supply, rewards or punishment of workers. According to law, this was not only a privilege of the plant leader, but belonged also to the specific sphere of duties of the persons assigned for such tasks, whereas the task of Dr. BUSTEFISCH consisted in the carrying out of technical planning of the Leuna division of the plant in its larger outlines, without his having to be active at Auschwitz himself.

In view of these facts, is it feasible that my client, Dr. BUSTEFISCH, can be charged with a culpable conduct insofar as he was engaged in the planned construction at Auschwitz and as far as he, in his capacity as a member of the Vorstand of the I.G., had to bear a general responsibility for it?

With regard to the charge of participation in a general program of slave labor, my colleague DIX II has already interpreted the opinion of the defense on this subject in behalf of the Vorstand of the I.G., whereof I want to point out expressly

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that the foreign workers as well as the prisoners, according to the available voluminous evidence of the defense and contrary to the assertions of the prosecution, were utilized at Auschwitz only for such jobs, which were carried out also by other, free, German workers, that therefore the term slave labor cannot even be applied for that kind of work performed by the prisoners.

It might be possible to construe a culpable conduct of Dr. BUETELISCH also if he, as Chief of the technical planning and as member of the Vorstand of the I.G., would have neglected his general duties of supervision, or if he would have tolerated improper conditions reaching beyond the scope of individual acts of excesses, in other words, if he would have tolerated unbearable conditions although he had knowledge of them.

The case in chief has proved that Dr. BUETELISCH had himself informed by the engineers and chemists in charge, who were assigned by him and by the sports movement, concerning the conditions on the construction site. He personally attended only a few meetings of the construction conferences in order to supervise the technical instructions which he had issued. However, the production chief of IG, Director Dr. v. STALLB. was assigned as his permanent deputy for this particular field of duty. It was possible for Dr. BUETELISCH to visit the construction site at Auschwitz only once or twice a year, in order to inform himself on the spot about the progress of the work. On such occasions he never observed any kind of improprieties with regard to the treatment of the workers. He was obliged to forego these visits in 1944 because, due to

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on order of the Ministry for Armament and War Production, he had to act as a technical adviser in the fuel plants of East and Central Germany, which were destroyed by air attacks. Louna alone had to endure 23 of such large scale attacks.

Moreover, all the executives were entrusted with the supervision of the construction of the Loan division of the Auschwitz plant. Dozens of visits and inspections of the Auschwitz

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plant were made each year by these officials, and not one of the experienced engineers and chemists found cause to report to the sports-chief Dr. SCHUBER, or to Dr. DUBOFFSKY, about improprieties with regard to the treatment of workers. The members of the technical commission of the I.G., the chief engineers of the firm, inspected Auschwitz twice. The Industrial Relations Inspector, numerous other authorities, the Gabecheon (General Plenipotentiary for Special Questions of Chemical Production) and all other experts who visited Auschwitz asserted that the treatment of the workers, including the prisoners, did not give cause to objections. Should all of them, including the plant management and the leading officials of the I.G. have shut their eyes or looked away if some unpleasant incidents occurred? Or were they not experts on such questions of that kind? I believe that the key for the answer of this question can be found in the fact that isolated cases of excesses, which sometimes became not even known to the local management, were exaggerated by stories talked about among the prisoners and prisoners of war, themselves, therewith creating a picture which no longer bore any resemblance whatsoever to the truth. In addition, the conditions in the main Auschwitz concentration camp into which the plant management, and even less so the defendants, could have had any insight were wrongly tied up with the conditions prevailing at the construction site of the I.G.; In other words, subject were linked together which ought to have been strictly separated. The prosecution even goes so far as to connect the defendants with outcrops committed in utmost secrecy behind the heavily guarded barbed wire fence of the concentration camp.

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Dr. BURETSCHE, whose residence and main field of activity was more than a day's journey away from Auschwitz, was neither aware of alleged impracticities as to the treatment of workers, nor, as the prosecution tries to assert, of any kind of atrocities committed within the Auschwitz concentration camp.

In order to prove that Dr. BURETSCHE was nevertheless informed about individual incidents which happened at the construction site, the prosecution put before him in his cross-examination weekly reports, made up in Auschwitz. The witness FLUST, who had made up most of those weekly reports, testified about the importance and the purpose of those reports. Further complete reports of that kind were introduced in the case in chief for Dr. BURETSCHE. I believe that in all fairness one could not expect that Dr. BURETSCHE, in view of his many duties, personally studied those reports, although his name is mentioned in the distribution list. The construction reports and, even less so, the weekly reports never came to his attention. He was informed by the main expert advisors only then, when technically important decisions had to be made. Moreover, one can see just from these construction-journals that in addition to many technical details, some excesses which occurred at the construction site, were reported whereby it becomes clear at the same time that this concerned only isolated cases which were immediately investigated and stopped. Thus, Dr. v. ST. LIE reported once to Dr. BURETSCHE, doubtlessly on the basis of such a weekly report, that prisoners were beaten up by Gaps. However, he was able to report at the same time that the plant management at once protested against such abuses and that all precautions were undertaken to

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prevent such excesses in the future. The case in chief of the defense has proved that the management of the I.G. was constantly endeavored to secure a proper and decent treatment for all workers. The prosecution was not able to produce a single exhibit which could prove an improper action of Dr. BUEFISCH with regard to the entire scope of labor commitment punishable according to criminal law.

The prosecution characterizes as a further crime the participation of the I.G. in the Fuerstengrube G.m.b.H., for which concern Dr. BUEFISCH acted as the chairman of the Aufsichtsrat on behalf of the I.G. already during the introduction of the evidence concerning this count of the indictment, the defense referred to the legal aspects which make such material inadmissible according to legal precepts. I refer to the judicial interpretation rendered there and especially also in the position of 20 November, which I do not have to repeat in detail. The prosecution believed that it would be able to invade to these legal aspects by the affidavit of the business manager of the Fuerstengrube G.m.b.H., who in that capacity was also the plant leader (Fuehrer des Betriebes), of the above company, in asserting that the I.G., especially in the person of Dr. BUEFISCH who was delegated by it as chairman into the Aufsichtsrat of the above named company, exerted a decisive influence on all business transactions. This assertion was completely refuted by the case in chief. The business manager F. L. K. was obliged to concede during the cross examination that the management of the business was exclusively in his hands, and that he was entrusted with the full responsibility for all transactions and that the conclusions which the prosecution drew from its assertion are not justified. However, it is wholly dislodging if the prosecution constructs the thesis that the I.G. or Dr. BUEFISCH were able to exert any kind of decisive influence on the extension or the output of the mines,

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because these matters belonged exclusively to the duties of the coal mining authorities. All other events which the prosecution stated in order to substantiate its assertion concern matters which happened inside the plant and which were never brought to the attention of the chairman of the Aufsichtsrat. The jurisdiction and competence of the chairman of the Aufsichtsrat is too much overestimated if it is assumed that it belonged to his duties, entrusted to him, to inform himself about individual events going on within the plant itself. The Aufsichtsrat is not the superior authority of the Vorstand. It is not entitled to issue orders and instructions to the business management. Within the Aufsichtsrat, the position of the chairman is usually equal to that of a chairman of a board. (Kollektion) He is not authorized to represent the Aufsichtsrat in negotiations with outside agencies. His statements are of no significance for the company if they do not confirm with decisions taken by the entire Aufsichtsrat. Within the Aufsichtsrat the chairman has a superior position. In particular, he has no authorization to decide upon differences of opinion arising within the Aufsichtsrat. That much to clarify the legal characterization of Mr. BUSTEFISCH's position within the Aufsichtsrat of the Saartongrube G.m.b.H., which, as its statutes prove, did not grant any extended authorities to its Aufsichtsrat beyond those provided for by general legal standards. If now the prosecution believed that due to the special agreements entered into between the partners and alteration of this legal status was brought about, then this assumption is refuted by the case in chief, especially by the document BUSTEFISCH 313, exhibit 134.

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The supplementary indictment which the prosecution considers as incriminating offered no possibility for the I.G. or for Mr. SUBTEFISCH to take the initiative with regard to the expansion or the output of the mine. Such measures were entirely up to the coal mining authorities, and the business manager FALKENBERG was obliged to accept their orders.

Therefore, no charges according to criminal law can be preferred against Mr. SUBTEFISCH for events and transactions concerning the Fuerstengrube and its business management; all the less, because not even the leader of these plants, Herr FALKENBERG who appeared here as a witness, had any knowledge of such events and emphatically denies them.

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The prosecution considers Dr. BUETEFISCH liable to punishment in accordance with Article IId of the Control Council Law of 20 December 1945 for accepting the honorary leadership appointment in the SS, and thus they refer to him as a regular member of an organization declared criminal by the IMT. In order to assess this charge properly it becomes necessary to explain Dr. BUETEFISCH's attitude towards political life altogether. I have submitted a large amount of affidavits to the Tribunal in which Dr. BUETEFISCH has unanimously been called a man completely unfamiliar with politics. Dr. BUETEFISCH was a technical engineer, and I may well state, without exaggeration, a really passionate technical engineer. He was completely absorbed in his profession and the tasks resulting therefrom, and his spheres of duty covered so much territory that they indeed took up all the energy^{of} this man. Dr. BUETEFISCH was a specialist in his particular field, was acclaimed as such far beyond the borders of Germany and often consulted in this capacity. I have already described his activity as far as exchange of experiences was concerned, and his efforts to promote the chemical synthesis. Because he was so extremely busy in this comprehensive sphere of duties, he had no time for any other matters. However, Dr. BUETEFISCH, the specialist, was not confining himself to his specific duties so that he would have ignored all events of everyday life. For instance, he also studied the problems which became preeminent when the National Socialists came to power, and many witnesses testified that he was very critical of and opposed to the events which National Socialism brought in its wake.

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Dr. HUETERFISCH never engaged in political activities; however, he always was prepared to help as far as was in his power when interferences were attempted and when shortcomings appeared. I would like to mention here as an example that he retained those chemists and engineers, whose dismissal had been demanded by the National Socialist authorities because of their Jewish origin, as long as possible. Furthermore, I want to mention that he helped those chemists who intended to emigrate who were under pressure from the Gestapo, and that he took measures to facilitate their emigration, as well as making it possible for other chemists to effect their emigration. Dr. HUETERFISCH never sympathized with the National Socialists. He did not apply for membership in the Party until such time when the Nazi district leader called upon the factory managers of Leuna to apply for Party membership. Together with his colleagues Dr. HUETERFISCH then applied for Party membership, but his application, contrary to that of the other ones, was rejected because Dr. HUETERFISCH used to be a member of a lodge. In 1937, when even the smallest and most insignificant government civil servant had difficulties in getting employment unless he was a Party member, the rejection of an application handed in by a man in such a prominent position meant a tremendous obstacle for him, and it was quite possible that this fact might have forced him to retire from his professional duties which were tantamount to his life work. A person whom the Party had designated unsuitable for acquiring Party membership could not possibly continue in a leading position, and for any length of time in the largest industrial enterprise of the Gau. Dr. HUETERFISCH was fully aware of such repercussions, and as he had personal relations

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with KRANZFUSS in his capacity as technical advisor of the
Erebag, having been a member of the Vorstand of that company,
ever since 1938, he informed KRANZFUSS, who held a high SS
rank,

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that his application had been rejected. Thereupon KRANEFUSS advised him to try once more to become a Party member by submitting a writ of petition which he, KRANEFUSS, promised to support. This petition was successful, and in December 1938 Dr. BUETEFISCH was admitted into the Party. However, although Dr. BUETEFISCH was now a Party member, this did not change at all his basic opinions. As before, he opposed everything which he considered unwanted interference. For example, when the Party attempted to exert its influence on industrial matters, Dr. BUETEFISCH opposed this move whenever he had a chance to do so. In this connection, I would like to refer to the POELITZ case when the Gau leadership tried to exert its influence on that company. Many other examples have been proved in my case-in-chief. Many affiants have also testified to the effect that Dr. BUETEFISCH's criticism as to measures of the political leaders could be very incisive when he disapproved of such measures, and it has also been proved that Dr. BUETEFISCH did not confine himself to merely criticizing things, but that he actively intervened when he had a possibility to do so. Indeed, he did have such an opportunity because of his personal relations with KRANEFUSS, who often intervened upon BUETEFISCH's request. In this connection, I would like to refer to the case of Professor GERLACH, among others. In Spring 1939, KRANEFUSS, who held Dr. BUETEFISCH in very high regard, approached the latter asking him to accept an honorary rank in the SS. By this, KRANEFUSS thought that he could bestow a special honor on Dr. BUETEFISCH. However, Dr. BUETEFISCH himself was not entirely pleased with this idea and thought up excuses for not accepting, which KRANEFUSS did not heed. Dr. BUETEFISCH did not want to offend KRANEFUSS, and now he insisted on

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certain reservations in the hope that those reservations would inhibit KRAEFUSS to further pursue his intention.

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He stated that he was incapable of performing duties in the SS, that he could not possibly swear the required oath, that he had no intentions of wearing a uniform, that he did not want to bind himself to obeying orders, et cetera. On his part, KRANEFUSS, emphasized that Dr. BUETEFISCH accepting an honorary rank meant nothing more than an honor bestowed upon him by the SS, and that this step did not mean that he would have to bind himself to any obligations, and that it was purely a matter of form. Following this KRANEFUSS arranged that Dr. BUETEFISCH received a relatively low rank in the SS, which was subject to the usual promotion procedure.

By joining Dr. BUETEFISCH did not become one of those persons who were designated by the IMT in its judgment as regular members of a criminal organization. The IMT did not define term regular member. This term will have to be clarified as yet in the course of interpreting the law and in the findings. From the fact that, for example, the IMT exempted certain categories of various members of organizations and stated that those categories were not covered by its findings, shows that in the opinion of the IMT only such persons can be defined as regular members in accordance with the verdict who were more than merely registered members, i.e. such persons who had any connections whatsoever with the aims and objectives declared criminal by the IMT, even if such connections were of a rather limited nature. However, if personal connections of such persons to the organizations and their aims declared criminal by the IMT can be constructed as having existed, this question can only be answered by establishing the fact that such a person can be called a member as laid down in the IMT verdict.

There are considerable discrepancies in the interpretation of the term regular member both in German penal law and as applied in practice by the denazification courts. I mentioned in my case in chief a decree of the Bavarian Ministry for Special Tasks in which honorary leaders of the SS are not considered regular members of the SS, and according to which persons are not punished for their membership in a criminal organization both in Bavaria as well as in Hessen in this occupation zone, whilst in the British Zone a different view is taken in some cases, as has been proved by the verdict (Exhibit 2191) of the Hamm Denazification authorities in the case versus SCHROEDER submitted by the prosecution for identification purposes. But even this particular verdict is no basis for a universal application by the denazification authorities, namely that the honorary leaders of the SS are to be considered members and must be punished as such. The above mentioned verdict bases its findings on the consideration that the culpability of an SS member was inherent in his promoting that organization and its objectionable aims. That this point of view coincides with the actual meaning of the indictment against the criminal organizations can be seen from the statements of chief prosecutor JACKSON in the IMT session of 28 February 1946, in which it is explicitly stressed that the motion, to declare certain organizations criminal, was aimed at bringing about punishment for having been accessories before and after the crimes. Also, the verdict of Military Tribunal II in Case IV versus POHL et al stated as the prerequisite for sentencing SS members because of their membership in a criminal organization that such members could only be considered accessories in the criminal activities of the SS by their approval of such acts,

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and that because of this interpretation, the Tribunal had acquitted ~~four~~ defendants who had held relatively high SS ranks, because a participation in the crimes of that organization, as defined above, could not be proved in their case. If British Zone decisions brought about minor punishments for SS honorary members in their capacity as members, such verdicts interpreted the charge promotion of the SS by the defendants. because these had been honorary leaders, respected and well known personalities, who had participated in official functions as SS leader, thus furthering the reputation of the SS. Even if such a strict standard were applied, which I think is wrong because of the exemption of the mounted SS from the group of members affected for example even if such a strict standard should therefore be applied in the case of Dr. BUETEFISCH, it will be impossible to brand this man a regular SS member. No evidence nor proof has been introduced showing that Dr. BUETEFISCH had any personal connections to and relations with the aims and objectives of the SS. At no time did Dr. BUETEFISCH actively participate in promoting the aims of the SS. The prosecution has been unable to prove one single case where such an action of promoting can be shown. If in the winter of 1944 KRAEFUSS approached Dr. BUETEFISCH with the request that the I.G. should also make a Christmas donation for the dependents of SS men who had been killed in action, the relaying of that request to Geheimrat SCHMITZ, who was responsible for such matters, does not constitute a promotion of the ~~aims~~ of the SS. The the dependents of SS men who were killed in action received assistance can not be possibly construed as promoting the criminal objectives of the SS.

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By joining the SS Dr. BUETEFISCH did not enhance its reputation. During my case in chief I was able to call on many affiants, even from amongst his most intimate colleagues and assistants as well as from amongst his friends, who were able to testify to the effect that they never knew of Dr. BUETEFISCH's membership in the SS as an honorary leader. Furthermore, it has also been proved that Dr. BUETEFISCH never appeared in SS uniform, and that he even did not own one. Nor did Dr. BUETEFISCH take up or maintain connections with an SS formation or any other SS-Office to ensure personal advantages for himself or his firm on the basis of his honorary rank. In its verdict the IMT emphatically pointed out that to declare whole organizations as criminal could bring about gross injustice if the necessary safeguards were not heeded. Amongst others it drafted and promulgated a statement to the effect that the classifications, the sanctions and the punishment should be kept uniform and should at all times dovetail.

I have referred to the procedure and practical work of the denazification courts and various related authorities as established by the occupation authorities in order to prove that in the final analysis the case of the defendant Dr. BUETEFISCH would be adjudged in the same manner as indicated above and interpreted all over the Western German Occupation Zones. I am of opinion that this reminder might also be of use to the High Tribunal.

In judging the question whether Dr. BUETEFISCH should be considered a regular member of the SS, we have once more to deal with the reservations on which he insisted towards KRANEFUSS, i.e.

- that a.) Dr. Bueteifisch was not to be under the command of the SS; thus he was not obliged and bound to obey,
- b.) he did not have to perform duties or participate in public meetings

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c.) he was not under any obligation to wear uniform, and therefore he did not have to appear as an SS leader,

d.) he was not sworn in.

All these reservations were respected up to the very end. According to my opinion they do not permit the conclusion that Dr. BUETERFISCH is to be considered a member of the SS, for all that remains in the registration on the files as a member, without Dr. Bueterfisch personally engaging in the tasks and objectives of the SS. One point is of particular interest, namely that those parts which refer to the reservations stipulated by him were taken by the prosecution as characteristic features of the SS in the Trial against the chief war criminals, i.e. blind obedience towards the leadership, submission to an iron discipline and power of command, unqualified and unquestioning fighting for the Nazi ideology, and finally the oath of allegiance. In the trial against the chief war criminals the prosecution replied to a question of the court as follows:

"We consider such persons members of the SS who have sworn the oath of allegiance and who are registered in the membership files".

Even in their final statement, the prosecution stressed before the IMT the decisiveness of this oath of allegiance. All this shows that the various reservations which Dr. Bueterfisch asked for and received when he was appointed to his SS rank, are basically in direct opposition to what is generally understood by a regular SS membership. To say that a person was a member of the SS who insisted on such reservations is a contradiction in itself. Besides, Dr. BUETERFISCH cannot be considered a regular member of the SS for the simple reason that he did not take the oath. However, according to the IMT judgment a member of a criminal organization can only then be sentenced

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if that person remained a member in the organization although he was aware of the criminal objectives of that organization. The prosecution did not specify the various criminal acts of the SS of which Dr. Bueterfisch was alleged to have had knowledge, and how he was to have acquired that knowledge. The proof of this knowledge cannot be brought by simply referring to general events. Now, the prosecution labors under the assumption that, in order to prove this knowledge, all they have to do is refer to the fact that Dr. Bueterfisch participated in social events of the group of friends surrounding the Reichsfuehrer SS, to which KRANEFUSS also received invitations. Already in the verdict against FLICK et al it has been established that this group of friends did not constitute an association or organization, and that any participation in its diverse social gatherings has no bearing as to a criminal culpability. The case in chief has also shown that no blame attaches to the participants of this group of friends as to definite knowledge of the atrocities with which the SS has been charged, and that such knowledge was not communicated to them. The prosecution refers to the announcement about the liquidation of the village of Lidice in order to prove the fact of knowledge, but this cannot be brought in for establishing the proof of such knowledge, according to the opinion of the defense, as there is no mention in this announcement that it was in particular the SS which was responsible for the liquidation of that village. Besides, no proof has been brought at all to the effect that Dr. Bueterfisch knew about this article. If it was published in a collection of pertinent records, which had been operated and compiled by the library of some I.G. office in Frankfurt where it was in the archives, this is

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by no means a suitable way of acquiring this knowledge, nor does it necessarily imply that Dr. Bueteifisch did know about these events. Amongst other things, the prosecution has submitted the obituary of KRANEFUSS for HEYDRICH, which the former was said to have held in a gathering of friends, and claims that this would constitute proof of the knowledge of criminal objectives. However, in this respect it must be said that there is certainly no great inventive genius at work

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if somebody wants to prove that this particular obituary should have shown or should show to the defendant Dr. BUETEFIGSCH the criminal character of the SS. Actually, it is more important that Dr. Bueteefisch did not have any knowledge at all about the above mention^{ed} address. He was not present when it was made, nor did he learn about it in any other way; to crown it all, it has not even been established as proved beyond any doubt that this speech was made at all, as other participants in the social gatherings of the circle of friends also expressed their doubts as to this point, which has become evident in case V before Military Tribunal IV. All other evidence which has been submitted in order to prove Dr. Bueteefisch's knowledge of the criminal objectives of the SS, which has been submitted by the prosecution, has been refuted. Unanimously, all the Nurnberg Military Tribunals have ruled that the defendants, and at that each of them individually, must be convicted of having had knowledge of the criminal objectives of their respective organizations, which ruling was applied in the case versus POHL et al and in the case against FLICK et al. However, the prosecution has failed to bring this proof. Furthermore, it cannot be said of the defendant Dr. Bueteefisch that he had special sources of information, and that as a consequence he knew more than others. Such an allegation must be ruled out altogether because in actual fact it amounts to this, that is, a person can be convicted for something which he ought to have known, without the necessity of bringing the actual proof that he did know it. By doing this, the limits set by the IMT for the sentencing of persons because of their membership in a criminal organization would be exceeded. Moreover, Dr. Bueteefisch had no special sour-

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ce of information, and the prosecution has failed to bring in any evidence to substantiate that claim. On the contrary, because of the tremendous amount of work in purely technical, engineering, and industrial fields Dr. Bueteefisch was so overburdened with various tasks

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that he was even less fortunate than others in obtaining information considering extraneous events/^{outside} his particular spheres of work. In spite of the above mentioned considerations, Dr. BUETEFISCH would be considered a member of the SS after all, another factor would have to be examined, namely whether he could have been expected at all to resign his SS membership. Dr. BUETEFISCH joined the SS before the war; however, during the war resignations were not accepted as a rule. Anybody who handed in his resignation became subject to disciplinary or other court action. The SS considered resignations a disloyal attitude which was to be severely punished; if anybody resigned from the SS this action invariably resulted in the fact that the person concerned was declared politically unreliable. All such persons were reported to the Reich Security Main Office in order to be put on their "Blue File", and it was only a question of time until such persons were sent up to a concentration camp. Thus the defendant Dr. BUETEFISCH did not even have the chance to resign from the SS. The two officially recognized excuses for resigning from the SS, that is, unfitness for SS service because of a chronic serious disease or joining the Wehrmacht as a regular soldier, did not apply to him because, as an honorary leader, these reasons could not be referred to in the case of a resignation. A resignation on his part would therefore have been evaluated as a political demonstration, and the SS would have considered it as an act of disloyalty. Consequently, if Dr. BUETEFISCH would have learned of the criminal objectives of the SS during the war and if he would have intended to hand in his resignation because of that knowledge, he would have been in a precarious position in the true sense of the word, and because of this he could not be expected to expose himself to such an imminent danger

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only in order to resign his membership which was purely a matter of form. If Dr. Bustefisch had been aware of the criminal character of the SS, it cannot be doubted that he would have attempted every means to get rid of his honorary rank. Already at the time when, in Spring 1944, Kranefuss approached him to deviate from the reservations which Dr. Bustefisch had insisted upon at the time of his joining and to don SS uniform at certain public meetings, Dr. Bustefisch was quite determined rather to face the dangers inherent in a resignation than to bind himself towards the SS in any way. And, when Kranefuss repeated his suggestion, Dr. Bustefisch unwaveringly stuck by his decision and asked him to take steps that he be removed from the register of honorary readers. Kranefuss knew well enough which risk this would involve and postponed the matter; after the attempt on Hitler's life on 20 July 1944 he finally pointed out to Dr. Bustefisch that it had now become impossible to realize such an intention. On the other hand, Kranefuss never mentioned again that Dr. Bustefisch should forego any of the reservations he had made.

All my statements which I have made up till now are in my opinion definite proof that the features characterizing a culpable membership in the SS, as defined in the DMF verdict, do not apply to the defendant Dr. Bustefisch. Moreover, Dr. Bustefisch cannot be considered a member of the SS according to the DMF verdict, for he did not promote the SS and its objectives in any way, nor did he have knowledge of the criminal nature of the SS. However, if an SS member is to be sentenced because of a culpable membership, this does by no means presuppose that these specific facts have been proved per se; what it does presuppose is the fact

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that the member is personally responsible for it. However, this responsibility does not exist if special reasons made it incumbent upon the person concerned to retain his membership, provided this was sufficiently justified and could be excused on account of such specific reasons. The latter facts apply to Dr. Bustefisch. When Dr. Bustefisch was approached to accept an honorary rank, he was faced with an extremely critical alternative. If he had been called upon to accept a regular member of the SS or joined the ranks of regular SS leaders, he would have definitely rejected such a proposal. As it was however, he was faced with a rather unusual alternative, that is, his reservations were accepted and he was given an honorary rank which was only registered in the internal SS files. Therefore, Dr. Bustefisch had no reason to consider himself a member of the SS. Consequently, he had no reason to reject the above mentioned proposal either. On the other hand, Dr. Bustefisch was also forced to consider what repercussions his refusal, not to accept the honorary appointment afforded him, would have had both for himself and for others. The affidavit Chusden shows how difficult a person Kranefuss was, and how easy it was to offend him. Conversely, Kranefuss had supported Dr. Bustefisch in his various actions when he repulsed interferences on the part of party officers, or when he made it his task to help persecuted people. Dr. Bustefisch would have been unable to utilize Kranefuss, if he had rejected the latter's offer, especially as he knew how sensitive Kranefuss was, to accept the honor which was to be bestowed upon him. Would it have been morally better and more justifiable to refuse accepting a mere registered honorary rank, and by doing so, to rob himself of the chance to help others as before, or does it not even apply today that, by conscientiously weighing the acceptance of a mere registered honorary rank, he did choose the lesser evil? Only such action deserved to be punished.

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which must be rejected if measured against the existing ethical laws, An action however, which can be justified and approved of morally can never be subject to punishment. No matter which view is taken in evaluating the charges made by the prosecution under count IV of the indictment, none of these views will converge into a condemnation according to which my client's actions should be punished by law, and which would make them appear damnable or abominable even from a purely ethical point of view.

In summing up I can say the following: No matter how thoroughly the various counts of the indictment as far as my client is concerned are scrutinized, none of them will lead to the conclusion that they constitute an action which should be punished by laws. Because of the short time at my disposal, I could not submit such a thorough scrutinizing in its entirety in my final plea, and I therefore refer to my closing brief. On the other hand, the prosecution has failed to prove in how far Dr. Buretfisch has committed acts that are punishable by law. Whatever legal arguments are advanced, universal international law, Control Council Law No. 10, or other legal standards, the same identical decision will always be arrived at, that is:

That the defendant be acquitted!

CERTIFICATE OF TRANSLATION

9 June 1948

We, Robert E. Clark, Thyra Thyssen, and Leslie H. Lawton, hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of the FINAL PLEA BURET/FISCH.

Robert E. Clark
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Film Feet Duaneau (Exon-19)

Case 6
Defense

TRANSLATION OF FINAL PLEA DUNNFIELD
OFFICE OF CHIEF OF COUNSEL FOR WAR CRIMES

MILITARY TRIBUNAL VI

CASE No. 6

FINAL PLEA

for Dr. Ing. Walther Durrfeld

presented by

Defense Counsel

Dr. Alfred Seidl,

Attorney at law in Munich

Seidl



FINAL FILM DUERRFELD

I n d e x

to the Final Film for the Defendant Dr. Ing. Walther Duerrfeld

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Mr. President, Your Honors,

The defendant Dr. Walter Darrfeld is one of the four defendants in this trial against the IG Farbenindustrie A.G. who have not been members of the Vorstand of this corporation, neither did he belong to the Technical Committee (TAK), the Commercial Committee (KA), the Technical Commission (TAKC) or to any other organization of this enterprise.

(1) Counts I and IV of the Indictment.

Yet he is accused of having participated, in his position in the IG and in other ways, in the planning, preparation, the beginning and conduct of wars of aggression in joint cooperation with the first of the defendants and various other persons, over a period of years prior to 9 May 1945. It is alleged that he held high positions in the financial, industrial and economic life of Germany and that in this capacity he had participated, as perpetrator or accomplice, in the planning and execution of the above-mentioned wars. This allegation in the Indictment is ^{even} refuted by Appendix A of the Indictment, which contains a survey of the positions held by the individual defendants, and also by the result of the evidence. Nothing whatsoever is contained in this survey which could justify such a conclusion. With respect to the position of the defendant Dr. Darrfeld, on the contrary it shows that, at the outbreak of the war in 1939, he was one of about 10 chief engineers in the IG Farben plant and that in 1944 he was appointed to Director together with two other main section heads of the Auschwitz IG plant, but in this position did not involve any change in his real position as Prokurist.

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The Prosecution has not furnished any proof either during the taking of the evidence that the defendant Dueffeld was connected with a plan aimed at the preparation and conduct of a war of aggression, neither was there any proof furnished which would admit the conclusion of participation in a joint plan for the commission of war crimes in the sense of Control Council Law No. 10 (Count V of the Indictment). If the principles are applied which have been set as a basis in the judgment of the International Military Tribunal, there can be no doubt that the charge against the defendant Dr. Dueffeld, in factual as well as in legal respect, of having participated in a joint plan, as it is alleged in Counts I and V of the Indictment, are unfounded. In this connection one must also point to the fact that, according to the uniform decisions of the Nuremberg Military Tribunals, a joint plan for the commission of war crimes and crimes against humanity, as it is alleged in paragraph 146 of the Indictment, is impossible. In view of the clear provisions of Control Council Law No. 10, and that Article II of this law merely mentions a joint plan for the preparation and conduct of wars of aggression.

The Defense was compelled, as early as during the taking of the evidence, to raise fundamental objections against the validity of Control Council Law No. 10, dated 20 December 1945. The raised objections were based above all on the fact that, a few days prior to the outbreak of the second world war, which occurred on 23 August 1939,

that Soviet Government had signed a secret supplementary agreement, together with the well known non-aggression pact with the German Government, in which the mutual spheres of interest for the territories separating both states were agreed upon, and a line of demarcation was fixed for the territory of the former State of Poland. The political and legal significance of this agreement is obvious and I need not go into further details in this connection. All that remains to be mentioned is the fact that in the mentioned White Book was published by the State Department in Washington which, on the basis of 260 documents, deals with the German-Russian relations during the period from 1939 to 1941, and which clearly shows that the government of the USSR took the initiative for the conclusion of the above-mentioned agreements. In a Trial Brief, which will be submitted to the Tribunal and in which I have arrived at the above mentioned conclusion, I have made a summary of the legal conclusions concerning the validity of the statute for the IMT and Control Council Law No. 10 and of the effects of the legal consequences of the IMT verdict to be derived from the contents of this agreement as well as from the rest of the documents:

- 1.) The victor, by virtue of his power, can take measures against the defeated even for such acts in which he himself has taken part in any form.
- 2.) For "crimes" committed by the defeated in which he himself has participated as an accomplice, the victor cannot, from the legal point of view,
 - a) either set up a court as legislator,
 - b) or participate in such a court as a judge.
- 3.) Acts which are contradictory to this principle (2a, b) are invalid from the legal point of view.

4.) In this sense, therefore, the following are invalid:

- a) Control Law No. 10 based on the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945 in so far as in Article II 1a, with the collaboration of the Soviet Union (Marshal Zhukov), it ordered a criminal prosecution for crimes against peace because of the invasion of Poland in autumn 1939 and the war of aggression against this State, and
- b) the judgment of the IMT of 30 September/ 1 October 1946 in the major Nuremberg Trial, in so far as a defendant was convicted of this crime in this judgment with the collaboration of judges of the USSR (Brigadier General of the Legal Department Nikitschenko and Lieutenant Colonel Voloshkov).

5.) The question as to whether, and to what extent, the invalidity of Control Law No. 10 and the judgment of the IMT of 30 September/ 1 October 1946 is also, besides this, a consequence of this partial invalidity does not have to be discussed here in any greater detail.

(2)

Count II of the Indictment

The defendant Dr. Duerrfeld is accused in Count II of the Indictment of having committed war crimes and crimes against humanity within the meaning of Article II of Control Council Law No. 10 together with other defendants during the period between 12 March 1938 and 8 May 1945 by participating in the theft of public and private property, spoliation and plundering, and in other property crimes in countries which were occupied by German troops during wars of aggression. In its presentation of evidence the Prosecution did

not submit a single proof which could justify the conclusion of such participation on the part of Dr. Duerrfeld. It is, therefore, superfluous to go into this Count of the Indictment in greater detail.

(3)

Count III of the Indictment

In this Count of the Indictment the charge is brought against the defendant Dr. Duerrfeld of having committed war crimes and crimes against humanity during the period between 1 September 1939 and 8 May 1945 by participating together with the other defendants in the enslavement and deportation for forced labor of members of the civilian population of countries which were under Germany's military occupation, furthermore, in the enslavement of prisoners from concentration camps and in the employment of prisoners of war for tasks which were directly concerned with military operations. With reference to the defendant Dr. Duerrfeld, the Prosecution has not produced any evidence which refers to any other plants of the I.G. besides the Auschwitz plant. The Defense, therefore, can limit itself to examining the activity of the defendant Dr. Duerrfeld with regard to questions of fact and law in his capacity as Construction and Assembly Manager of this plant during the period from 1941 to 1945.

(4) The Choice of the Location of the Fourth Buna Plant of the I.G.

The fourth buna plant of the I.G. was constructed by virtue of an order issued by the Reich Minister of Economics on 2 November 1940 (Prosecution Exhibit 1405, RI-1175) and Prosecution Exhibit 1413, RI-11112). The choice of location was exclusively determined by the transportation situation, the nature of the terrain and the extraordinarily

favorable juxtaposition of coal, lime, gravel and water in the region of Auschwitz. In connection with this I refer above all to Prosecution Exhibits 1412 and 1414. The hearing of the evidence has clearly shown that the concentration camp situated in the vicinity of Auschwitz, which was at that time very small, played no part in the choice of the location.

The defendant Dr. Derrfeld learned of the proposed construction of a new bath factory and processing plant in the region of Auschwitz for the first time in the beginning of March 1941, and so at a date when the choice of a location for this plant had already been decided for a long time, as is shown by the documents of the Prosecution in Volume 72. In connection with this I refer to the letter which the defendant Dr. Ambros addressed to Dr. von Staden, the manager of the Louna plant, on 15 March 1941 (Derrfeld Document 1450, Exhibit 125), and in which it is announced that the defendant Dr. Derrfeld is to be shown his future duties for the first time on 24 March.

(5) The Position of the Defendant Dr. Derrfeld in the Auschwitz Plant
of the I.G.

The new Auschwitz plant of the I.G. was a so-called Two Sports Plant. The bath plant was planned and constructed by Sports II, while Sports I was responsible for the planning and construction of the processing plant. The coordination of all the workers participating in the construction of this tremendous new plant was effected in the joint construction conferences which were held under the direction of either the defendant Dr. Ambros and the defendant Dr. Buchdahl, or the latter's representatives. The Prosecution has submitted the records of 16 construction conferences in evidence, 28 such

Construction conferences were held in all. The defendant Dr. Duerrfeld was proposed as Construction and Assembly Manager. At first he performed his duties from Leuna and did not move from there to Auschwitz with his engineering working staff until autumn 1942. Up to this time the superintendence of the construction job was exclusively in the hands of Chief Engineer Faust from Ludwigshafen and the responsibility of the plant managers and construction managers of the numerous construction and assembly firms which were employed in setting up this new plant.

The position of the defendant Dr. Duerrfeld within the plant management is shown by the plan of organization for the Auschwitz plant of the I.G. of 22 July 1944, which was submitted by the Defense as Exhibit 126 (Duerrfeld Document 1518). The plan of organization reproduces the status as of 1 July 1944 and was described in detail to the Tribunal by the defendant Dr. Duerrfeld during his examination on the witness stand. According to this plan of organization the plant management was subdivided into five Main Departments. The Construction Management formed one independent Main Department and was under the direction of Chief Engineer Faust, who was examined as a witness before this Tribunal. The second Main Department was the Engineering Department, which was under the direction of the defendant Dr. Duerrfeld in his capacity as Construction and Assembly Manager. The manufacturing departments were likewise independent Main Departments and were under the direction of Dr. Siefeld and Dr. Brause. Both of these Main Department Chiefs have also been examined as witnesses before this Tribunal. Finally, the Business Department and the Personnel Department formed independent Main Departments which were directed by Dr. Savelsberg and Dr. Rosenbach. Dr. Savelsberg

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has likewise testified as a witness before this Tribunal.

The Chiefs of the six Main Departments of the plant management of the IG in Auschwitz were not chosen and appointed by the defendant Dr. Duerrfeld, but by the agencies of the I.G., which were responsible for this.

The position of the defendant Dr. Duerrfeld in the over-all planning of the Auschwitz plant of the I.G. is further shown by the sixteen records of Construction Conferences which have been submitted by the Prosecution.

From 1943 on the management of the plant itself was in the hands of the Chiefs of the six Main Departments. The defendant Dr. Duerrfeld has discussed this collaboration of the Main Department Chiefs in detail on the witness stand and I refer to the contents of this testimony. Since at first the plant was in the process of construction it was in the nature of things that Dr. Duerrfeld in his capacity as Construction and Assembly Manager should assume the leading position in this body with respect to the other Main Department Chiefs until the end of the construction period and that he had to head the shop committee of the IG employees until further notice.

The position of the defendant Dr. Duerrfeld within the plant management would be only incompletely indicated if at the same time reference were not made to the fact that besides the 260 independent construction and assembly firms which were charged by the IG with the construction of this new plant the Branch Office of the Armament Ministry (Armament-Construction Management) played an important part in carrying out the tasks of construction and assembly and independently carried out entire construction projects. The defendant Dr. Duerrfeld has testified on the witness stand about this, too.

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(6) The employment of foreign workers at the plant Auschwitz of the I.G.

The Prosecution charges that just like in other plants of the I.G., also at the plant Auschwitz foreign workers were employed and that these workers have come to the plant and were used there under conditions constituting the elements of a crime in the sense of Article II of the Control Council Law No. 10:

The Defense Counsel has already dealt with the basic questions of law to be considered in connection with the employment of foreign workers. However, this question may be answered in detail, one thing is certain:

Neither the Hague Regulations of Land Warfare from 1907 nor any other interstate agreement contains any provision enumerating in detail all the elements of fact constituting the crime of so-called slave-work. This is a highly disputed problem and surely the actual practice of states is far away from the principles espoused by the Prosecution in these proceedings. In view of this actual practice it must be considered doubtful indeed, whether members of a Government can be held criminally responsible because of participation in the employment of foreign workers. So for instance a secret agreement was signed by the Governments of the USA, Great Britain and the USSR in February 1945 at Malta carrying out a proposal of the so-called Morgenthau-Plan in which it is said among other things:

"Germany is to be required to pay reparations in a threefold

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- a) ...
- b) ...
- c) Employment of German workers."

The Allied Control Council for Germany did not hesitate to put these agreements into effect. On 20 September 1945 it has issued Proclamation No. 2, containing the following regulation under Chapter VI, Fig. 19 at:

"The German authorities will carry out, for the benefit of the United Nations, such measures of restitution, reinstatement, restoration, reparation, reconstruction, relief and rehabilitation as the Allied Representatives may prescribe. For these purposes the German authorities ... will provide such ... labor, personnel and specialists and other services, for use in Germany or elsewhere, as the Allied Representatives may direct."

In this connection reference is to be made to Control Council Order No. 3 of 17 January 1946, which provides obligatory labor service for all men between 14-65 and women 15- 50 of age who are capable to work and authorize the labor employment offices to direct these persons coercively into places of work.

Also it should not remain unmentioned that the Government of the United States had no legal misgivings to put at the disposal of France not less than 680 000 German prisoners of war in the summer of 1946, after the cessation of hostilities and the capitulation of Germany. A great number of these workers were required to work in mines and other plants under conditions which caused the death of many thousands and brought about repeated protests by the international Red Cross.

If therefore it is very doubtful, whether members of a Government can be held criminally responsible for participation in the employment of foreign workers, then these

objections must be raised the more, if such an accusation is made against a private employer, to whom these workers were referred to by the labor office or other competent authorities.

The Prosecution, however, has also not presented any evidence from which a participation by the defendant Dr. Duerrfeld in the procurement of foreign workers abroad could result. Actually the referral of foreign workers took place exclusively by the competent labor employment offices in Katowitz, Bielitz, Jaschowitz and the outside branch of the Labor Ministry at the plant. Besides the Defense Counsel has submitted extensive evidence showing clearly the endeavors of the works management, to bring to Jaschowitz voluntary workers by way of agreements with foreign firms. We have submitted several agreements of this kind as examples. Therefrom it can be gathered that these foreign workers worked partly under more favorable conditions than the German workers.

(7) The Quartering of foreign workers.

The Prosecution was in no position to submit evidence in Court permitting a conclusion in regard to the quartering of foreign workers, which in itself would contain the elements of a criminal act. The Defense could therefore have limited itself simply to state this fact. If nevertheless we did submit to the Court extensive evidence in this direction, then it was done in the consideration to show on this example the spirit which permeated the works management in social respect.

The numerous affidavits, plans and pictures of the Defense permit the conclusion that in this respect the Plant Management did everything in its power which was at all possible in view of the difficulties imposed by the war and the fact that the plant was located far from any large city. As a general rule the foreign workers were not billeted differently in any way from the German workers.

(8) The Feeding of Foreign Workers.

The same is true in regard to the feeding of these workers. In this respect also the Prosecution has offered no evidence which could justify the charges set forth in the indictment. The extensive evidence of the Defense, on the other hand, shows that despite great difficulties which increased more and more as the war went on the Plant Management did everything imaginable not only to guarantee the food supply of the workers but also to bring it to the highest possible level both in respect to quantity as well as preparation. The tables presented by the Defense concerning the rations issued and number of calories show beyond any doubt, that in the years 1941-1945 the foreign workers in the Auschwitz plant of the I.G. received daily many times the amount which is actually being allotted to the population of occupied Germany today, three years after the ending of hostilities. I should like to assure that this reference alone should be enough to refute the charges made by the Prosecution. Moreover, the size of the allotments for the feeding of foreign workers was prescribed by law just as for German workers.

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As the Ansbach plant maintained its own form it was also possible for the Plant Management to grant additional supplies in this branch.

(9) The Medical Care for Foreign Workers.

It became evident during the course of the trial that in view of the conditions caused by the war and the remote location of the plant the Ansbach Plant Management was faced with difficulties such as war, not even remotely encountered by any other plant of the I.G.. In this connection the fact must be pointed out again and again that living conditions in a plant in the process of construction, can in no way be compared with the conditions usually prevailing in a plant which has already been in operation since normal peace times. If in spite of this it was also possible for the Plant Management in Ansbach to attain such remarkable results in regard to the medical care for all employees and workers and the general hygienic conditions despite local difficulties and to set up its own hospital, then this deserves all the more appreciation. It is precisely these accomplishments which show more than anything else the social spirit with which the Plant Management was imbued and the high degree of conscientiousness by which it was guided.

(9) The Working Conditions of the Foreign Workers.

In this respect also the Prosecution has proved nothing which could even remotely justify charges of an illegal nature. On the contrary, the evidence of the Defense shows

that the working conditions in the plant itself differed it no way from the conditions under which the German workers were employed. On the contrary, the evidence has shown, that due to their previous skilled training the German workers had to work in part considerably longer.

Within the limits of the appraisal of this evidence it seems unnecessary to go into the questions of wages, leave and similar matters in detail. These matters were also prescribed by law and the Plant Management did everything within the range of possibilities open to it to make general and working conditions as favorable as was at all possible. For details I refer here to the contents of the numerous affidavits which deal with these questions.

(10) The Employment of Prisoners of War

British prisoners of war were employed with the construction and assembly of the new plant at Auschwitz from the fall of 1943 on. There was a constant allotment of around 1200 prisoners.

As the hearing of the evidence has shown the Plant Management had no authority of its own with reference to guard duty, billeting, feeding, medical care and exercise of disciplinary powers. On the contrary, this was exclusively in the hands of the local Wehrmacht agencies. In view of the fact that the Prosecution has offered no evidence which would justify any charges along these lines it becomes ^{un}necessary to discuss these questions in any greater detail. The British prisoners of war whose affidavits were presented by the Prosecution

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have, on the contrary, expressly admitted, that they themselves had no reason to complain about their treatment. The Prosecution has also offered to prove for the allegation that these English prisoners of war, or prisoners of war in general, were employed in plants of the I.G. under conditions which would constitute a violation of the Hague Rules of Land Warfare of 18 October 1907 and the Geneva Agreement concerning the treatment of prisoners of war of 27 July 1929. In view of the fact that the verdict of Military Tribunal IV in Case No. 5 versus Flick contains some findings in this question which are not readily apparent from the text and the sense of the respective regulations, I shall here briefly

discuss the most important points with regard to the interpretation of these regulations in connection with the question of the employment of prisoners of war in general.

Concerning the question of the employment of prisoners of war Article 6 of the Hague Rules of Land Warfare dated 18 October 1907 states among other things:

"Work performed by prisoners of war shall have no relation to military operations."

Article 31 of the Geneva Agreement of 27 July 1929 states:

"Work to be performed by prisoners of war shall have no direct relation to military operations. It is especially prohibited to use prisoners for manufacturing, or transporting, arms or munitions of any kind, or for transporting material intended for combat units."

As far as the General Prisoner of War Agreement of 1929 is concerned, it for the most part defines more precisely the regulations contained in the Hague Rules for Land Warfare regarding prisoners of war. It contains in addition some amplifications as well as restrictions of the regulations of these Rules of Warfare. The insertion of the word "direct" before "relating" constitutes a principal case of restriction.

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One has to assume that this is merely the codification of international law or law which has developed from customs acquired after 1907, especially as a consequence of the growth of the idea of total war and economic war.

Article II of the Geneva Protocol of War Agreement of 1929 prohibits 3 different types of employment for prisoners of war, namely, first:

a) Their use for the transport of weapons and munition as well as material intended for combat units. The requirement that these items must be intended for the combat units refers to all items included in this category. The idea is obviously that prisoners of war cannot be expected to appear at the front and there on the firing line follow to the combat units those things which directly or indirectly contribute to or facilitate the battle against opponents of the prisoners of war. The essential thing is that the transport has to be intended for the combat units.

b) If the above plea is it prohibited to use prisoners of war for work tasks as are directly related to military operations.

It directly follows from this article that every form of employment for prisoners of war in the war or war effort industry is prohibited. In this case military operations has the same as actions by combat units, but not the activity of occupation administrative offices or similar. As such example of this type of prohibited employment, the manufacture of weapons and munitions of any kind for land, as well as air and naval warfare is cited.

If quitting is the only example which is cited for prohibited manufacturing activity, then this example does give a clue to what this agreement means by tasks which are in direct relation to military operations.

A close interpretation of Article 31 also appears advisable for the reason, that otherwise by the token of total war one finally comes to look upon every employment of a prisoner of war as prohibited by Article 31. If a prisoner of war undertakes to repair roads, works in quarries, ~~works in~~, factories manufacturing civilian clothing, and does still more so is still serving the war effort if only in the sense that by this activity he releases another worker for the front.

(11) The Employment of Prisoners from Augsburg Concentration Camp.
The charge contained in the indictment refers mainly to the employment of prisoners in the construction of this new plant of the I.G. in Augsburg. Both the Prosecution and the Defense have submitted extensive evidence on this point.

(12) The Order for the Employment of Concentration Camp Prisoners.
The employment of concentration camp prisoners in the construction of the new plant was initiated by an order of Goering of 18 February 1941 in his capacity as Commissioner for the Four Year Plan. The Prosecution has submitted this order as Exhibit 141B (SI- 1240, Volume 72). This order states among other things the following:

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"I request that the following steps be taken in order to assure the supply of laborers and the billeting of these laborers needed for the construction of the Auschwitz Bana Plant in East Upper Silesia, which will commence with the greatest possible speed:

1. ...

2. ...

3. Procurement of the largest possible number of skilled and unskilled construction workers from the adjoining concentration camp for the construction of the Bana Plant".

This order of the Commissioner for the Four Year Plan was addressed to Reichsfuehrer SS Himmler. Copies of the order were transmitted to four additional government offices. One of these offices was that of State Secretary Dr. Syrup in the Reich Ministry of Labor, that is to say, the supreme planning authority for all labor questions at that time - namely, before the appointment of Goebbels as Plenipotentiary General for Labor Allocation. Two additional copies were addressed to Reich Minister Dr. Todt in his capacity as Minister for Munitions and as Plenipotentiary General for the Control of the Building Industry. Finally, the fourth copy was addressed to the Plenipotentiary General for Special Questions of Chemical Production. All national authorities and government offices were thereby informed whose duties ^{it was connected with} included the procurement of workers and the coordinating of labor allocation.

As already mentioned it was not, until the beginning of March 1941 that the defendant Dr. Dueffeld received the request from the defendant Dr. Baatzflech to collaborate in the building and construction of the plant which was being planned in East Upper Silesia. On 20 March 1941 in connection with the preparatory work he and the Construction Superintendent, Chief Engineer Faust, accompanied the defendant Dr. Baatzflech to the conference in Berlin with SS Obergruppenfuehrer Karl Wolff.

One week later a conference was held with the Commandant of Auschwitz Concentration Camp, in which

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two additional engineers from the I.G. participated besides Chief Engineer Faust and the defendant Dr. Duerrfeld. On 30 March/1941 in Louna the defendant Duerrfeld himself composed a report about this conference in Anschwitz of 27 March. The Prosecution has submitted this report as Exhibit 2200 (SI-15148).

(13) Does the Employment of Concentration Camp Prisoners Meet the Requirements of a Punishable Action?

The employment of prisoners in the construction of the new plant in East Upper Silesia was decreed by an order of the Commissioner for the Four Year Plan, that is to say, the supreme planning authority for all questions of the war economy. The legal consequences resulting from this fact will be examined later.

Now, to begin with, the question to be discussed is whether the employment of prisoners from a concentration camp is inadmissible regardless of this binding order.

It is obviously not possible within the limits of this legal appraisal to discuss all the questions arising in connection with these camps in an even approximately exhaustive fashion. In order to answer the questions arising in this trial, however, this does not appear necessary. On the contrary, the following remark is sufficient:

The concentration camps established in Germany were State establishments. They were no less so than the penal institutions of the administration of justice and were carried in the budget of the German Reich just like the latter. These camps had their legal basis in the "Decree of the Reich President for the Protection of People and State" of 28 February 1933 (Reich Law Gazette Part 1, 933, S. 83).

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This Decree in part suspended the basic rights of the Constitution of the Reich in order to enable the State agencies and in particular the Security Police to interfere with personal liberty and freedom of assembly to the extent which seemed necessary to them in view of the political situation at the time. It cannot be doubted that this Decree to a large extent removed the foundations of the "State based on law" in the traditional sense. However, it is likewise certain that one still cannot see the essential facts constituting a punishable action in the suspension of the basic rights of the Constitution by a law promulgated in a legally valid way and in the establishment of State concentration camps alone; for as a sovereign State Germany was completely free to regulate her own internal affairs.

In so far as persons were committed to a concentration camp for reasons of State security and other political reasons this was done through an "Order for Protective Custody" issued by the Reich Main Security Office (Amt IV, Gestapo Office). In connection with this reference should be made to the Law concerning the Gestapo of 10 February 1936 and the implementation decree of the same date issued in conjunction with this.

However, it would be erroneous to assume that only prisoners who were committed for State police or other political reasons were lodged in the State concentration camps. A large part of the prisoners had not been committed to these camps for political reasons but for criminal police reasons. Some of these were persons who had not only been sentenced to imprisonment by regular courts in implementation of the respective provisions of the Reich Penal Code, but who had also been sentenced to security detention.

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These sentences of security detention were largely executed in the State concentration camps. Besides these security detainees other criminals, anti-social elements and similar categories, were also frequently committed. These prisoners were not committed by the Gestapo but by the Reich Criminal Police Department (Art V of the Reich Main Security Office) and in implementation of the respective provisions of the Reich Penal Code and the police administrative laws of the provinces.

In connection with this it might be pointed out that in April 1943 alone according to the testimony of the witness Schermuly of 12 May 1948 more than 2000 prisoners were transferred from Lantzenhausen concentration camp to Monowitz Labor Camp (Camp IV), who had been committed to a concentration camp solely because of their criminal record and their anti-social attitude.

It is obvious that after the outbreak of the war State police measures also had to be taken against foreign nationals in the occupied territories. As a general rule these measures also were taken by the authorized agencies of the Reich Main Security Office in implementation of regulations which had been decreed by the local military commanders in accordance with generally recognized rules of international law.

Regulations of this kind were also issued by military commanders and the Allied Control Council, in Germany after the latter's unconditional surrender. Thus, for example, Directive No. 38 of the Allied Control Council for Germany of 12 October 1946 contains detailed

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regulations on arrest and internment and furthermore the surveillance of National Socialists, militarists and "any possibly dangerous Germans". According to Part 1, Figure 16, it is the purpose of this Directive to draw up common rules for all Germany concerning "the internment of Germans who, though not guilty of specific crimes, are considered to be dangerous to Allied purposes, and the control and surveillance of others considered potentially so dangerous." that this is a political measure and that the political convictions of the prisoner constitute the reason for the arrest is clearly shown by Part 1, Figure 5, which states literally:

"A distinction should be made between imprisonment of war criminals and similar offenders for criminal conduct and internment of potentially dangerous persons who may be confined because their freedom would constitute a danger to the Allied Cause."

As a matter of fact, since the termination of hostilities about one million German nationals have been confined in prisons and camps in all four zones of Germany by the Allied authorities for political reasons. A part of them are still in custody now. Finally, in judging the above-mentioned Directive and in determining its value as evidence the fact should not be disregarded that it was issued on 12 October 1946, that is to say, almost one and a half years after the termination of hostilities.

Now, the hearing of evidence in this trial has shown that toward the end of the war about 600,000 prisoners were confined in concentration camps. The greater part of these prisoners were employed in enterprises of the war economy, since in the second half of the war the civilian production still had only assumed very modest proportions.

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These prisoners were employed at 700 enterprises and accommodated in about 500 labor camps.

If one takes these figures into consideration, it seems indeed inconceivable that these prisoners should not be subject to the same labor service duty as were all Germans and all members of the other belligerent nations as a matter of course and as was regulated by law. A different opinion would be all the more inconceivable since the Hague Convention of 1907 as well as the Geneva Convention of 1929 concerning Prisoners of War also provide a labor duty for prisoners who had fallen into the hands of the enemy in the course of combat. It is inconceivable and no honestly thinking person would understand it if prisoners of war, who had been taken prisoner while fulfilling their duty towards their country, were placed in a worse position than these persons who were described above and had been admitted to a concentration camp for the aforementioned reasons. Until now nobody will have thought that, at least during the war, the general labor duty should not apply to the prisoners in the concentration camps too. This has probably also been the reason that no regulations have been issued through which this labor duty was expressly provided. It was thought to be a matter of course. In this connection reference must be made, however, to the various ordinances regulating the labor duty of convicts, persons held in security detention or in detention pending trial. This labor duty especially results from the Law of Penal Execution in the wording of the publication of 22 July 1940 which was submitted by the Defense as Exhibit Darrfold 379. Moreover, reference must be made to

the general decree of the Reich Minister of Justice dated 7 June 1938, which introduced labor duty for persons held in detention pending trial even before the outbreak of the war (Exhibit Darrfeld 377 and 378).

Consequently no fundamental legal objections can be raised against an assumed labor duty of the prisoners in State concentration camps. This applies first of all to the State agencies which make this labor allocation and which are in charge of the administration of the camps. All the more this must apply to private entrepreneurs who were allotted prisoners by the Labor Office or to those cases in which prisoners were employed by order of the supreme planning authority of the Reich, i.e. the Plenipotentiary of the Four Year Plan. Neither the IG nor any other industrialist had the possibility of examining in detail whether a prisoner had been lawfully or unlawfully committed to a prison or a concentration camp.

A legal examination could also not be made as to whether a labor duty could be assumed in consideration of the special circumstances of the individual case or whether it could not be, for some special reasons. If such a possibility had been expected of, or even allowed an entrepreneur, this would practically have been the end of any governmental activity. In fact, no State has proceeded, up to now, even to take something of this kind into consideration. For the rest, the defendant Dr. Darrfeld did not develop any personal initiative in the field of the employment of prisoners. His measures were strictly in accordance with the order of the Plenipotentiary of the Four Year Plan dated 18 February 1941.

and with the directives given to him by his superiors during conferences on building matters and on other occasions. It is quite natural that at the building site relatively few prisoners were employed at a time at which the building site and the installation were still in the beginning stages and that the number of prisoners increased with the always increasing total number of workers and finally amounted to 32,000 workers. The evidence submitted by the Defense unambiguously shows that the percentage of prisoners among the total staff of the plant remained almost unaltered during the whole time.

(14) The camp IV (Auschwitz) as a prisoners' labor camp.

Up to the summer of 1942 the prisoners employed with the Auschwitz plant of the IG were brought every day from the Auschwitz concentration camp to the building site by railroad, by trucks and part of them also on foot, and after the working hours in the evening they were brought back. In view of the relatively great distance between the camp and the building site, it can be understood that this transport caused inconveniences as far as above all a great source of trouble for the prisoners themselves. It was therefore quite natural that it was suggested that the prisoners who were employed with the plant be housed in a labor camp in the immediate vicinity of the plant. By this the time consuming and fatiguing transport to and fro was not only avoided, but the living conditions of the prisoners also improved in other respects. This has been clearly shown by the evidence and as regards this I beg to refer to the numerous documents which were submitted by the Defense in this connection. In this way we succeeded not only in protecting the prisoners better

against the danger of epidemics - not a single epidemic disease broke out in the Auschwitz camp - but moreover the food of the prisoners could be considerably improved. There can be no doubt that the IG contributed considerably to the improvement of the general living conditions of these prisoners by making Camp IV, which was originally destined for free workers, available for them. As was clearly shown by the witness, Camp IV differed in no way from the other workers' camps as regards construction.

(15) The Camp IV: Labor Camp or Concentration Camp?

The Prosecution alleges that Camp IV - Auschwitz - was a concentration camp. This opinion is wrong. The evidence showed on the contrary that Camp IV was one of the 42 labor camps which, as branch camps, belonged to the large concentration camp. In this connection I refer to the letter addressed by the Chief of the SS Economic and Administrative Main Office to the Reichsfuehrer SS on 6 April 1944 which was submitted by the Defense as Exh. 371 (Document Book XVI). In this letter the organization of the Auschwitz and Birkenau camps and of the labor camps belonging to them is described in detail.

(16) The Administration of Camp IV.

The administration of Camp IV, where the prisoners employed with the IG were accommodated, was exclusively in the hands of the responsible SS Agencies. The Camp Commandant of this labor camp was an SS-Untersturmfuehrer, who in turn was subordinate to the Commandant of the Auschwitz Camp III which is mentioned in Exh. 371.

This, in turn, received his orders and instructions exclusively from the Inspector of the Berlin-Oranienburg concentration camp. By order of the Reichsführer SS of 3 March 1942, the Inspectorate of the concentration camps, which up to that date had been subordinated to the SS Main Operational Office was taken away from this office and incorporated, as Amtgruppe 2 (Division D) into the Economic and Administrative Main Office, the chief of which was SS Obergruppenführer and General of the Staff SS Oswald Pohl. He was interrogated before this Tribunal as a witness. The I.G. and the Auschwitz Works Administration had no authority whatsoever to interfere with the administration of Camp IV. This has, I believe, unequivocally been proved by the evidence taken in this trial. The results of the evidence are throughout consistent with the contents of the documents and the depositions of the witnesses, which were submitted and made in other cases before the Danzig Military Tribunal.

Just as in other concentration and labor camps, there existed a self-administration of the prisoners also in camp IV. The senior camp functionary, the senior block leader and the other functionaries in this sharply defined hierarchy were picked out of the prisoners themselves. According to the evidence taken in this and in other trials conducted before the Danzig Military Tribunal, it must, in accordance with the literature published in the meantime about the concentration camps, be presumed that in the Camp IV too the SS confined itself to the maintenance of the external order, leaving the shaping of the living conditions in the camp itself and in the late nearly exclusively to the prisoners' self-administration. Just as in other camps, the self-administration seems to have been in the camp IV too.

in the hands of a comparatively small circle of left-wing political prisoners which monopolized all important key positions in the internal camp administration, wielding an authority the extent of which can hardly be imagined by an outsider, and which came by no means to an end when the camps were dissolved.

(17) The Accommodation of the prisoners in Camp IV.

The I.G. Ltd., at the expense of five millions of Reichsmark, constructed the camp where the prisoners were accommodated later on. But the quartering in the camp and the fixing of the number of people quartered in a hut was again exclusively a matter for the camp administration, and/or its commandant. The same applies to the use of the space of a hut for special purposes (huts for the sick, work-shops etc.). This distribution of the space of the huts was completely outside the influence of the I.G. works management and exclusively done at the discretion of the SS camp administration. But the evidence submitted by the Defense shows that the huts were available by the I.G. works management were practically always sufficient for the reception of the prisoners accommodated in the camp, and that difficulties, which could not be avoided because of the situation caused by the war and were outside the sphere of influence of the works management, ^{only} always have occurred only temporarily.

(18) Medical care for the prisoners.

What has been said with regard to the administration of the camps, applies also to the medical care for the prisoners of Camp IV. This, too, was the exclusive responsibility of the physicians of the SS,

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and the D.O. plant physician had no power to influence in any way the medical care for the camp prisoners.

The responsible camp physician and his collaborators received their orders and instructions from the station physician of the SS and this one in turn was exclusively subordinated to the leading camp doctor camp physician in the concentration camp inspectors at B. Elm-Oranienburg. The latter received his technical instructions from the Reich Physician SS and Police.

The evidence taken has shown that the establishment of the infirmary at Camp IV satisfied all demands which might be made for the establishment of a sick-bay in a labor camp. It was, incidentally, not built for the purpose of an infirmary in a labor camp to provide for the stationary treatment of seriously sick prisoners. For this, the big hospitals were destined. In the case the infirmary of the Ansbach concentration camp.

The Prosecution made the allegation that the infirmary in the infirmary of Camp IV was admitted for a certain period of only two weeks and that not more than 5 p.c. of the total number of prisoners were allowed to be treated simultaneously. These allegations made by the Prosecution are incorrect and have been unequivocally refuted by the evidence. That this allegation is untrue is also shown by the sickness records of Camp IV submitted by the Prosecution itself.

But the evidence has also shown that official care for the prisoners had to a great extent in the hands of the inmate doctors and inmates acting as official assistants,

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and that the SS-physicians confined themselves as a rule to exercising a general supervision. In these circumstances one can not help getting the impression that for some of the abuses alleged by the Prosecution, witnesses not the SS physicians nor to be blamed but rather the managers under the direct supervision of the prisoners self-administration who exercised the real power in the infirmary.

(19) The Prisoners' Food Supply.

The food supply for the prisoners was, just as the guard duties in the camp, the quartermaster and the medical care, in the hands of the SS administration, in which again the self-administration of the prisoners participated to a large extent. Beginning from March 1945, the supply services of the Auschwitz plant of the I.G. took over the purchasing and the food delivery for the Camp IV in the same way as they had done from the beginning for the free workers and their families. Purchases of food was done in accordance with the ration scales fixed by the responsible authorities, in particular by the food offices and the trade inspectors.

The Defense submitted voluminous material about the amount of the rations and the actual quantity of food delivered to Camp IV. The tables submitted to this Tribunal show that with regard to the quantities allotted as well as to the calories, the prisoners received partly very times as much food as the civilian population is actually receiving at present per day.

The evidence submitted by the Prosecution also shows that 80-90 p.c. of all the prisoners received supplementary rations.

FINAL PLEA SUBMITTED

the rest ration for
for many workers and workers doing long hours.

Although it is true that beginning from March 1943 the I.G. in the interest of the prisoners took over the purchasing and the delivery of the quantities of food, this made no difference as to the responsibility of the SS for preparation and distribution of the food in the camp itself. Practically, the I.G. had no influence on that, and here too, it seems to have been the practice that the SS confined itself to the general supervision, while for the rest the actual disposition about the quantities of food delivered by the I.G. was in the hands of the leading circle of prisoners.

The "Brotz" - or "Brotling" - soup (Bromsuppe), which the I.G. supplied of the "Brotz" site itself, was a supplementary grant of the works management, which was given to the prisoners on top of the officially allotted rations.

(20)

The Clothing of the Prisoners.

The SS was also exclusively responsible for the clothing of the prisoners. But the facts as submitted above on which shows that the plant management also did in this regard - whatever was possible in order to render conditions more favorable for the prisoners. It made a great number of clothes available and distributed, above all, necessities to protect against the frost during the winter months. Whenever it could do so, the plant management tried to help the prisoners by distributing buttons and laces. It is quite natural that certain limits were set to the plant management's efforts in this direction, in view of the extraordinary difficulties due to the war. The plant management's efforts in this respect must be appreciated that much more,

and that show how erroneous the Prosecution's allegation is that the plant management had shown itself more or less indifferent towards the fate of the prisoners.

(21) Disciplinary authority over the prisoners.

After the preceding statements it is indeed a matter of course that the administration of disciplinary authority over the prisoners was exclusively in the hands of the SS and/or the Camp Commandant. This was unanimously confirmed by the evidence. In this connection the fact seems worth mentioning that even the Camp Commandant himself held only a very restricted disciplinary authority of his own over the prisoners. It was for instance not within his sphere of jurisdiction to inflict corporal punishment - let alone heavier punishment. The punishment reports submitted by the Prosecution show that the Camp Commandant was only allowed to have corporal punishment executed after previous consent of the Inspectorate of the Concentration Camps in Berlin (Division D of the Reich Economic and Administrative Office). In the punishment report the offences had to be described and the punishment could only be executed after the Department Chief in charge had given his consent and the camp director had raised no objections against the execution of corporal punishment from the medical viewpoint.

(22) The employment of the prisoners in the Auschwitz Plant of the I.G.
As was shown by the evidence the type of work was not always the same during the different periods. It is quite natural that at the beginning of the building work the prisoners were mainly employed for earth digging and proper building work, just as were the German and foreign workers.

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The prisoners could not be employed for higher types ^{of} work during the first one and a half years, for one reason because the work had to be done under the direct supervision of the SS guards until the force around the plant was steady, and this was, in general, only possible if they were employed in large detachments.

These conditions changed radically when individual sectors of the plant were being forced in and the prisoners could move within these individual sectors of the building site, and most of them could also be employed according to their professional training.

After the completion of the force around the whole building site at the beginning of 1943, the SS administration restricted itself to having the prisoners who were employed at the plant guarded by a cordoned off guard detail, the force around the plant and by occasional patrols within the plant area. The prisoners could move freely within the plant itself and were only subordinate to the Kapos (prisoner foremen) who were themselves prisoners. After that date the plant management was also in a position to employ prisoners in small groups for skilled work. As regards this, the evidence does show that the plant management began very early to employ prisoners for highly qualified work as well and even to train them in courses for this purpose. This was of course not only in the interest of the prisoners but also in that of the plant management. The documentary evidence submitted by the Prosecution, as well as that presented by the Defense, in particular, shows unambiguously that above all the lack of suitable skilled workers was a great obstacle to the quick completion of the plant.

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Therefore it is not understandable, if the Prosecution alleges that it was the intention of the works management to use the prisoners only for unskilled work.

With the start of assembly work the prisoners could be allowed more freedom at the plant itself and actually from 1943 on it was so that prisoners worked on the same construction job and on the same assembly jobs together with German and free foreign workers, without any difference as to the type of work.

At work in the plant the prisoners were kept together in so-called "Kommandos" (work details). The formation of these work details took place in Camp IV by the Labor Allocation Leader of the SS (Arbeitsstellenführer). But actually the formation of work details and the assignment of prisoners to these various work details, of which there were several hundred, lay entirely in the hands of the prisoners' self-administration. The Labor Allocation Office was, following the Stolz Bay, one of the most important key positions, which was held by the Jewish group in the self-administration of the prisoners.

The I. ... to influence upon the composition of the prisoner details. The works management could only report to the Labor Allocation Office the need for workers and requisition certain categories of skilled men like, for instance, bricklayers, locksmiths, welders, carpenters, electricians etc.. These prisoners were then actually assigned to the various Departments and whether the planned work was distributed among the prisoners according to their skills, was practically exclusively within the discretion of prisoners that were influential with the Labor Allocation Office of Camp IV.

Just like in case of the Sick Bay the SS obviously limited itself also here only to a general supervision.
Besides, the evidence has revealed that many prisoners at the plant Auschwitz of the I.G. were also assigned to administrative jobs and that entire offices, as for instance the pay roll accounting office, were at times occupied exclusively with prisoners. However, narrow limits were set to the works management in this respect, since the administration of the concentration camps did not wish the assignment of such jobs to prisoners. In this context we I refer to the order of the Chief of the Main Office Economy and Administration of 26 June 1942, which I have submitted as Exhibit Duerrfeld No. 374 (SO-2318, Vol. XVI). This order among other things says:

"... Moreover I have ordered that prisoners should be transferred at least every half year. Therefore the assignment of prisoners to book keeping jobs or to other duties requiring extensive training is to be avoided."

(23) The Working Speed of Prisoners.

The Prosecution claims that the prisoners were forced to a particularly excessive working speed. The evidence presented by the Defense - and in almost every affidavit this question has been touched upon by the witnesses for the Defense - proves that this allegation is entirely wrong. At first I must refer to the fact that the supervisors and foremen of the I.G. and the construction- and assembly concerns of the numerous firms charged with the construction of the individual plants of this gigantic enterprise, had no right at all to give any instructions to prisoners and to urge them to a particularly fast working speed. All members of the I.G., as well as the employees of the construction and assembly firms, were forbidden to converse with prisoners.

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Work instructions had exclusively to be given to the Capo only, who then gave his instructions to the prisoners accordingly.

Actually the working speed of prisoners at the plant Auschwitz of the I.G. was considerably slower than that of the free foreign workers and also of all of the German workers. This certainly can be said to be the result of the evidence. This fact has been confirmed by almost all of the 400 affidavits submitted by the Defenses, and it has been pointed out that the expression "prisoner tempo" was equivalent to meaning a particularly slow pace of work.

The Prosecution was unable to present any evidence whatsoever showing that the works management itself has promoted or even tolerated an increase in the working speed of prisoners by coercive measures or similar means. In fact the works management has condemned such measures and on its part tried to make the prisoners voluntarily increase their output by introducing a bonus system and thus trying to appeal to the will of the workers. The defendant Dr. Dierfeld on the witness stand has himself given testimony to these endeavors by the works management and its success and various affidavits submitted by the Defenses confirm this testimony.

In the rebuttal procedure the Prosecution itself has now presented evidence showing that also the administration of the concentration camps has ^{also} advocated and promoted the bonuses.

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Fixing the production schedule for prisoners the works management generally based its estimates on 50 to 70% of the productivity of free workers. Naturally these requirements varied, according to the type of work. A prisoner employed as a book-keeper could by proper pro-
training be expected to perform just as well as a free worker. On the other hand, in the case of helpers and of heavy workers, the low degree of willingness to work, the partly existing lack of training, and the reduced physical capacity to be observed in some of the prisoners, was given widest consideration. This is confirmed, in a manner excluding any reasonable doubt, by the extensive evidence material, which the Defense has submitted to the Tribunal in 18 volumes.

In this connection it merits emphasis that many prisoners volunteered to work at the plant on Sundays. This certainly could not have been the case, if the work requirements of the I.G. and of the construction and assembly firms would have in any way exceeded the capacity of the prisoners and could not have been expected of them.

(25) The Work conditions for Prisoners at the Plant.

As a result of the evidence it may be stated that the prisoners at the plant Buchenitz were not required to do any harder work than the free workers and prisoners of war. Of course it is unavoidable that in the construction of such a gigantic plant, especially at the start of construction and assembly work, also labors ^{also} must be performed that do require a certain amount of physical exertion.

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Also the carrying of cement bags belongs to this kind of work. However, it would be wrong to assume that only prisoners were required to carry cement bags.

The evidence has shown that also free workers had to carry cement bags. Besides, this is a type of work which is being performed every day everywhere in the world on construction jobs. Beyond that the evidence presented by the Defense makes it clear that only a relatively small number of all those employed at the plant was called upon to do this work. Beginning 1943 the transport of cement bags was discontinued altogether, the works management having in the meantime constructed huge bins and concrete factories, in which the cement was transported by mechanical means and mixed on the spot into finished concrete parts.

It was similar in regard to the laying of cables, which several witnesses for the Prosecution have stated as being particularly strenuous. It is a fact that numerous cables were laid at the plant in the city of the I.G.. But the laying of these cables was done exactly like any other work. As a matter of fact there are certain jobs that cannot be done without the application of human labor. Also it is not true that the works management of the I.G. at Auschwitz used only prisoners for such jobs. Obviously free workers were employed in the laying of cables just like in the carrying of cement.

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If it was relatively frequent that prisoners were assigned to these labors, then, of course, for the reason that these jobs could also be performed by helpers. Besides, it was exclusively within the competence of the Labor Allocation Leader (Arbeitsverleiher) of the SS at the Camp IV and the prisoners employed at this office to determine which prisoners were to be assigned to these work details. The I.G. works management had no influence upon that. The Labor Allocation Office of the works management merely could give to the Labor Allocation Leader at Camp IV the figure of prisoners required for such work, without having any possibility of having any slightest influence upon the selection.

In this connection it appears indicated to refer to the fact that the works management of the I.G. at Auschwitz has to an enormous degree advanced and facilitated physical work through the introduction of construction machines and technical aids of all kinds.

The evidence has shown that aside from the already mentioned concrete factories not less than 232 km. railroad and small tracks had been laid, 21 locomotives and 2,300 transport cars had been employed and that apart from any other construction and auxiliary machines not less than 55 travelling cranes, 48 conveyor belts, 150 concrete mixers, 40 crushers, 80 assembly cranes and a large number of rotating cranes, railway cranes, construction elevators and similar machines had been in use.

The Prosecution was not able to prove that the works management gave even one explicit instruction dealing with inhumane treatment of prisoners or that it demanded work efforts of the prisoners that could not be expected from them.

(26) Breakdown of Prisoners at the Plant.

The Prosecution alleges further that at the plant Auschwitz of the I.G. numerous prisoners have collapsed due to the heavy work. This ^{also} allegation is incorrect. Naturally accidents may have occurred at a plant ^{under} construction that employed more than 30,000 workers or cases of prisoners just like other free workers who become sick on the job or who become incapable of continuing work due to some physical weakness that could not be recognized right away. However, also in regard to this allegation the Prosecution failed to present conclusive proof in the sense that the works management issued instructions which could have averted such breakdowns. Contrary to that the Defense has presented extensive evidence to prove that the works management at Auschwitz has tried again and again to employ the prisoners according to their physical aptitudes and trade training and that it has reportedly submitted corresponding proposals to the Commander of Camp IV. Insofar as accidents at the plants are concerned, this much can be said, on the basis of the evidence produced: The prevention of factory accidents and the safeguarding of all employees against such accidents was within the responsibility of the works management, to which it has applied itself with the greatest care from the beginning by issuing proper instructions (through lectures) and by correct supervision of all work through safety engineers.

If plant accidents could not be completely eliminated after all, it is because of the matter in general and because of the kind of work to be performed in the construction of such a huge plant. The evidence produced by the Defense gives an impressive picture of the efforts made by the plant management in this direction.

(27) The abuse of prisoners in the Auschwitz IG plant.

It cannot be denied that, at the beginning of the construction works in Auschwitz, prisoners were beaten by Kapos and SS-guards even in the plant itself. The defendant Dr. Duerrfeld himself, when testifying in his own defense, has given the reasons responsible for the fact that it was not possible, at least at the beginning of the construction works, to eliminate such incidents completely. The decisive reason could be found in the fact that the construction officers of the Auschwitz IG-plant and the foremen of the building- and assembly firms had no right whatever to give orders to the Kapos in regard to the treatment of the prisoners. The building- and assembly firms as well as the IG-plant management itself had no alternative other than the repeated remonstrations to the camp commander and lodging complaints against excesses which had become known.

The evidence has shown that the plant management has immediately contacted the camp commander in every case that came to its attention, and has demanded the abolishment of such excesses. Above all, however, a strict order was issued by the building Administration at the beginning of the construction works prohibiting corporal punishment or other abuses on any person working in the plant. This prohibition was generally known to all persons employed in the plant and attention was called to the strict compliance with this order.

by the plant management and especially by the defendant Dr. Duerrfeld himself during all conferences with the section heads and the representatives of the building- and assembly firms, as well as on any other occasion. Moreover, the building and assembly firms were even compelled by the plant management to sign a statement pledging to point out this prohibition by the IG plant management to their assembly chiefs and foremen and to insist that the order was complied with. The evidence before this Tribunal has shown that the plant management has done everything imaginable in this respect in order to make any excesses impossible, and has shown furthermore that the plant management has taken the responsible persons to account if such excesses occurred. However, the evidence has furthermore shown that the number of such excesses continued to decrease and that during 1943 and 1944 they had practically ceased entirely.

The defendant Dr. Duerrfeld has testified as a witness in his own defense that, in case of complaints with respect to guards or Kapos, the commander of Camp IV has shown full understanding and has supported the efforts on the part of the plant management to guarantee a correct treatment of the prisoners. That the plant management was justified in believing these statements made by the camp commander is shown if only from the change of attitude in regard to the prisoner problem which was applied even in the SS ever since the Inspectorate of the concentration camps was incorporated into the Economic and Administrative Main Office. In this connection I should also like to refer to the order by the Chief of the Economic and Administrative Main Office, dated 8 December 1943, which was presented by the defense as Duerrfeld exh. No. 375, and in which is expressly repeated that the beating, pushing or even touching of a prisoner is prohibited.

This same order imposed the duty to the camp commander to give weekly instructions to the kapos and guards about the contents of the order.

(25) The witnesses of the Prosecution

In the frame of the evidence the Defense has submitted voluminous material to the Tribunal. Scores of witnesses have been questioned before this Tribunal who have testified about the working conditions in the Auschwitz IG plant. Moreover, a total of 400 affidavits have been presented in addition to numerous photographs, maps of the plant, graphic descriptions and similar material of evidence. This evidence offers an exhaustive picture of the working conditions as they actually existed in the Auschwitz IG plant. As to the weight of this evidence we shall express our opinion in a detailed trial brief which will be submitted to the Tribunal.

The testimony given by the witnesses of the Prosecution offers a picture which basically as well as in regard to the details, differs considerably from the description given by the witnesses of the Defense. In order to be able to appraise correctly the value of the evidence produced by the Prosecution, it appears to be necessary first to introduce a few basic comments: The "principle of pleading" is the decisive view in the proceedings before these Tribunals contrary to the continental-European penal law which is dominated by the "principle of examination". It is completely left to the discretion of the parties as to what kind of evidence they want to present to the Court. The fact that, in view of the difficulties prevailing in Germany at present in regard to legal questions of the state, the Defense is in a decidedly disadvantageous position as compared to the Prosecution, does not require a more detailed justification.

All documents captured by allied troops, just in order to give an example, were in the hands of the prosecution during the entire period of evidence taking.

The dangers involved in such a trial - and it is obvious that in trials of world-wide importance these dangers are considerably greater than in ordinary trials - must appear all the more precarious as the prosecution, contrary to the position of the public prosecutor in a German trial, is not guided by the desire to find the real truth. In German criminal proceedings, for example, it is obvious that it is the duty of the public prosecutor to find not only the incriminating but also the exonerating circumstances, and furthermore arrange for the submission of such evidence, which is in danger of ^{being} lost. The conception shown by the prosecution before these tribunals is an entirely different one. It submits exclusively such kind of evidence which is not to incriminate the defendants. Witnesses who do not appear to be suitable for this purpose are not examined by the prosecution and the names of these witnesses are not disclosed to the Defense.

The dangers involved in such proceedings must necessarily be all the more grave as another principle is generally disregarded in these trials which ought to be a decisive component part of all modern criminal proceedings, namely, the oral procedure and the directness of the proceedings. The submission of affidavits signifies a considerable limitation of this principle. The affidavits are taken by the trial parties themselves.

By applying the above mentioned principle of proceedings the Prosecution obviously accepts only such statements in these affidavits which appear to incriminate the defendant. If only the selection of the witness is exclusively made from the view of his suitability as a witness of the Prosecution, everything is omitted in the formulation of an affidavit - which, as a rule, is carried out by a member of the Prosecution - which in any way could serve as exonerating circumstances. Psychologically it is easily amenable that such witnesses will feel little inclination during the cross-examination to revoke or add to his previous statements, since otherwise he might expose himself to the charge of having become guilty of perjury.

Only in observing these basic arguments will it be possible to reach also the real weight of evidence expressed in the affidavits. This especially applies to the affidavits of the British war prisoners employed in the Auschwitz IG plant as prisoners of war. As the affidavits have shown, there were more than 1200 British prisoners of war working in the Auschwitz IG plant. The Prosecution has presented affidavits by 19 former British prisoners of war. It is obvious that in the selection of these witnesses only those were chosen whom it proved to be suitable as witnesses of the Prosecution. Moreover, if one considers that all affidavits were formulated by the same interrogator, it cannot then be surprising that a picture of the working conditions in the plant just has been drawn which necessarily must be a caricature, at least in view of the number of conclusions contained in the statements.

This can be applied in a similar way to the witnesses of the Prosecution who have worked in the Auschwitz IG plant as former prisoners, as the evidence has shown there were about 9 000 prisoners quartered in Camp IV when this camp was fully occupied. From all these prisoners the Prosecution has selected 18 from whom affidavits were presented to the Tribunal. Out of that number only two are Germans who did not conceal their political attitude. One does not have to emphasize that the selection of these prisoners was effected according to the principles already mentioned.

In finding the real value of evidence from the statements of part of these witnesses the fact must not be overlooked that several of these witnesses suffered a F.M. which, from the human point of view, would make a certain prejudice appear entirely comprehensible.

However, far more than half of these witnesses, who as former prisoners were quartered in Camp IV and from whom the Prosecution has submitted affidavits, belonged to that kind of prisoners who, as so-called "prisoner leaders" were directing the self-administration of the prisoners in the camp. I have already mentioned that for an outsider it is hardly possible to get an idea, which would only be approximately correct, of the power and influence of these prisoners. Above all, however, one fact must not be ignored in the finding of the real value of the evidence of the testimony given by these witnesses:

In shaping the internal matters of the camp, and in the settlement of all questions of the self-administration the organs of the latter authority were naturally dependant upon a close cooperation with the SS. This fact is confirmed in all proceedings against guards and commandants of concentration camps and furthermore by the entire literature published so far. Nothing therefore appears to be more obvious than the attempt made at this time by these prisoners to put the blame for all unbearable conditions and deficiencies on an organization which neither maintained any direct connection with the SS itself nor with the self-administration of the prisoners. Obviously that is, in the employment of prisoners in industry, in every case the industrialist by whom these prisoners had been employed.

Finally, the fact ought not ^{to} be ignored either, in appraising the statements of these prisoners, that large numbers of them - if not most of them - are evidently advocates and supporters of an economic and social order and of a political program which is evidently opposed to a social order which recognizes the freedom of the individual and an economic order based on free enterprise.

The fact that several allegations made by these witnesses of the Prosecution are unfounded may be exemplified as follows. The allegation was made by several witnesses of the Prosecution that prisoners had collapsed in the plant every day and that it was a daily occurrence to see dead prisoners being carried back to the camp by their comrades. In the rebuttal proceedings the Prosecution has presented the list of the prisoners who during the period from 16 November 1942 to 17 January 1945 had lost their lives, either in Camp IV or in the plant itself or through other circumstances (Document I-15295 which for the purpose of identification is listed by the Defense as Duffield Document No. 471).

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In our trial brief we shall discuss in detail the contents of this note which was made in Camp IV by a prisoner. Even at this early date I like to point to the fact that the testimony given by the witnesses of the Prosecution are definitely refuted by the contents of this note. The note covers the period from 15 November 1942 to 17 January 1945, that is a period of almost 900 days. According to the entries in these notes ~~21~~ ²⁶ prisoners died on work details. Of that number 57 prisoners died in 1943 and ~~26~~ ³¹ prisoners in 1944. These numbers do not only clearly show that the working conditions in the plant had constantly improved, but one can correctly praise the real value of evidence contained in these numbers only if one considers the fact that apparently the writer of this note has also listed those prisoners who deceased on "work details" who actually had not lost their lives in the plant itself but at any place outside of the camp or on the way to and from the place of work under the sole command of the office of armament construction or the commander of the anti-aircraft artillery. It would certainly be in contradiction to all experience in life if the writer of these notes would not have added to the list of persons deceased on work details the names of those prisoners in whose cases the precise place could not be determined.

Finally, attention is to be called to the surprising fact that not a single free German or foreigner from the 25,000 free workers in the plant was suggested by the Prosecution to appear as a witness.

(29) The Critical Position of the Defense with Regard to Evidence.

In appraising all the material which has been submitted in evidence by Prosecution and Defense the fact should not be disregarded that in contrast to the Prosecution, which in this respect had all facilities at its disposal, the Defense has found itself in a decidedly critical position with regard to evidence, so have submitted evidence concerning this question also.

This evidence shows that it was only under the greatest difficulties that the Defense was able to establish contact with highly important former members of the staff of the Auschwitz plant of the I.G. It is impossible for the Defense to travel abroad. Almost 25,000 foreigners were employed in the plant. For many of these a statement on behalf of the Defense is a personal danger. In so far as witnesses are abroad or in the Soviet occupied zone of Germany they could not be brought before this Tribunal.

These difficulties, however, existed to an especially high degree in the case of the former prisoners who were employed in the Auschwitz plant of the I.G. In so far as the persons concerned were political prisoners these difficulties arose from the fact that the "League of Friends Persecuted by the Nazi Regime" has forbidden its members to testify as witnesses for the Defense.

The hearing of the evidence has also shown that members of the prisoners' organizations have brought pressure to bear against witnesses who gave affidavits for the Defense in spite of this prohibition to make them retract their statements. It is obvious that under these circumstances the factual requirements

for ascertaining the truth can be regarded as present only to a limited extent.

(30) Auschwitz Plant of the I.G. and Auschwitz Concentration Camp.

Prisoners were employed in the construction of the new plant of the I.G. in West Upper Silesia by virtue of an order of the supreme economic planning authority of the German Reich, namely by the Decree of the Commissioner for the Four Year Plan of 18 February 1941, which has already been mentioned. This order was the foundation which served as a point of departure in all questions concerning the employment of prisoners. There existed no other connections whatsoever between the I.G. on the one hand and the Administrative Office of Auschwitz Concentration Camp or Monowitz Labor Camp (Camp IV). Naturally, the Plant Management had to enter into negotiations with the Administrative Office of the concentration camp in so far as the implementation of the employment of prisoners and the organization of their allocation was concerned. No one who considers the conditions without prejudice will be able to find anything unusual there - even if in contradiction to the experience of daily life he tries to see something suspicious even in completely natural occurrences. As a matter of fact, the Prosecution could not prove anything which even in the remotest way and in any respect might permit one to conclude that the negotiations between the Plant Management of the I.G. and the camp went beyond business negotiations and those that were required by the nature of things. That also applies especially to the occurrences in Camp IV and the "selections" alleged by the Prosecution. In my opinion on the basis of the results of the evidence one cannot even say with certainty

whether such "selections" took place at all, even if it might be true that prisoners were shipped from Camp IV to Camp Auschwitz or Camp Birkenau, still, the conclusion can be by no means drawn from the fact of this transport that these prisoners were transferred for the purpose of extermination. It has already been repeatedly pointed out that the infirmary in Camp IV was planned merely for short-term medical treatment - even if in fact numerous prisoners were quartered there for months - and that this actual bad treatment was supposed to be given in the base camp. On the basis of the results of the evidence it can further be regarded as proven that by virtue of orders of the Security Police as well as by virtue of orders of the Administrative Office of the concentration camps an exchange took place regularly between individual labor camps and also the various concentration camps. In connection with this I refer to the order of the Chief of the Economic-Administrative Main Office of 28 July 1942, which has already been mentioned and which the defense has submitted as exhibit 374, and from which it appears that the prisoners had to be exchanged at least every half year. The Plant Management, therefore, must not necessarily have seen anything suspicious in an exchange of the personnel of Camp IV, even if such a systematic exchange had come to its knowledge, as a matter of fact, as the evidence has clearly shown, the Plant Management had no knowledge of this, except for individual cases for which a reason was given. This exchange in the personnel of the camp might not be especially noticeable for the reason alone that it apparently extended quite uniformly over a comparatively long period of time.

and the outgoing prisoners were more than offset by those arriving at the same time, as the hearing of the evidence has further shown, the Plant Management was regularly informed by the Camp Administrative Office only of the personnel strength at the time, without it being subdivided into departures and arrivals. The defendant himself only received the strength report from time to time every 2 weeks.

That which the evidence showed to be the case for Camp IV applies to an even greater degree to Auschwitz Concentration Camp itself and especially to Camp Birkenau. In appraising this result of the evidence before this Tribunal I do not even have to specially emphasize that which has already been ascertained in numerous other trials; namely, that the concentration camps and in particular the so-called extermination camps were surrounded by an impenetrable wall of secrecy. The fact that one person or another in the vicinity of these camps may have heard of some suspicious happenings or other in these camps by way of rumor does nothing to change this. Neither the defendant Dr. Duffield nor any other member of the Plant Management learned anything about the extermination measures in Camp Birkenau.

Besides that, the following essential facts must be stated: the prosecution had produced no proof that the Plant Management in the Auschwitz plant of the I.G. knew anything about these measures. Above all, however, it was unable to prove that this Plant Management issued any orders which permit one to perceive any causal connection between the working conditions in the Auschwitz plant of the I.G. and these extermination measures.

The subsequent attempt of the Prosecution to establish some connection, no matter how remote, by all possible means must on the basis of the result of the evidence be considered a failure.

(31) The Legal Excuse of Necessity

Prisoners were employed in the Auschwitz plant of the I. G. by virtue of the order of the Commissioner for the Four Year Plan of 18 February 1941. I have already argued that no basic legal objections at all can be pleaded against the employment of prisoners by industrial enterprises to whom ^{they} had been assigned by the proper government agencies. However, in case this Tribunal should not follow me in all the points of the legal trains of thought which I have advanced the following might also be pointed out with reference to the question of the employment of these prisoners - who as a matter of proof entailed greater expenses for the industrial enterprises involved than did the employment of free workers:

The order for the construction of a fourth buna plant was given by the Reich Ministry of Economics toward the end of 1940, at this time the German Reich and its war effort were approaching the high point of the war. No further words need be lost in dwelling on the importance of buna and high test engine fuels in a modern total war. The Prosecution has made a reference in this connection both in the Indictment and its Opening Speech and as a matter of fact it is absolutely impossible to wage war in the 20th century without these two important raw materials or their derivatives.

In a brief, which will be submitted to this Tribunal, I have examined the legal consequences resulting from this situation of the German-occupied forces and the German military economy, with regard to the assumption of a national emergency. The results of this investigation is as follows:

A national emergency is an emergency, not to be relieved in any other way, concerning vital interests of the state and the body politic. In as far as acts are permitted on the basis of it, one must not only assume grounds which exclude guilt, but they even become positive grounds for justification.

Outside of a general emergency in the sense of international law also recognized a position of emergency. By this self-defence is necessary in the sense of international law, military law, etc. etc., and in themselves contrary to international law. Distinct from self-defence is necessity within the domain of international law is, however, the military necessity (war action) (war action), which in itself does not justify the violation of the laws of war, necessity of military necessity, however, distinct considerations. The necessity, in which the present and potential development of the state in distress, etc. etc., justified a national principle, which are also aimed at the interests of all civilized nations, the violation of international rules, including also the provisions of military law. In the application of the concepts of self-defence and necessity as recognized in national and international law, the illegality of violations committed is extended, by, etc. etc.

found itself in a situation which could no longer be relieved by the application of other means, and which jeopardizes its existence.

But not only the German Reich and its armed forces found themselves in a state of necessity, but also these defendants.

Within the short course of this trial it is not necessary to explain in detail what, at least since the beginning of the war, an order of the state government was in the public life of Germany absolutely binding and that a refusal to execute an order concerning the vital interests of the state involved imprisonment for life or the death of the individual.

A refusal to obey prisoners, especially by an order of the High Command for the Four Year Plan of 18 January 1941, could not have not at all be considered as a consideration. Most of all could this be done by a construction and use. Of course not so, like the Defendant Duerrfeld, was not even a member of the Wehrmacht of the 16, but only to execute the orders he received from his superiors. The ground established, like the 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Conclusion on Orders.

(32)

The Defendant Dr. Duerrfeld, in his capacity as the construction manager during the erection of the Auschwitz plant,

found himself in a situation not at all different from that of a soldier in the frontline who has to execute an order given to him. The military laws were for him no less cogent than for a member of the armed forces. I expounded the legal consequences, resulting from this state of affairs, in our brief which will be submitted to this Tribunal.

(33) The Personal Responsibility of the Defendant Dr. Duerrfeld.

Dr. Duerrfeld's position within the works management of the I.G. may be seen from the organizational scheme of these works, which was submitted to this Tribunal by the Defense. Furthermore, I have already emphasized that the heads of the main sections within the works management were not appointed by the Defendant Dr. Duerrfeld personally. The same applies to other important section heads. However, the Defendant Dr. Duerrfeld, during the entire period of his activity at Auschwitz, did not cease to express his doubts in regard to the reliability of his colleagues, who were in part his equals, in part his superiors.

On the other hand, it is not a matter of course that in a plant, which is just in the process of being built up, and in which in 1941 more than 30,000 workers are employed, the construction of assembly buildings cannot be held responsible for any mistake of a subordinate, a boy, and for abuses which are committed, contrary to express and clear directives of the works management, by foremen or master mechanics of the I.G., or of the contractor and construction firms. The question of the guilt of this Defendant must be exclusively judged by ascertaining whether or not

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He has given any orders or issued any directives which were in contradiction to any of the generally recognized principles of humanity, and which in themselves satisfy the specification of a criminal statute, such directives were not issued by the works' management. The evidence taken has proved that without a shadow of a doubt, also one cannot think of any act which the Defendant Dr. Duerfelm or any other member of the works' management has failed to do, to which he could have been in duty bound, or the neglect of which would have been the cause of a consequence disapproved by the law. In the event Dr. Duerfelm, in his capacity of construction manager, has done everything reasonably to be expected from him considering all circumstances and especially the conditions of war. The evidence submitted by the defense is unequivocal. As a matter of fact, the Defendant Dr. Duerfelm kept thinking day and night of the best working and living conditions as favorable as possible for all the workers employed within the plant. Hence Dr. Duerfelm, himself a member of the works' management, has fully declared before this Tribunal: "It is a grave error that this man of all people is the object of charges which constituted the subject in this trial."

If the Tribunal, in evaluating the evidence submitted by both parties, will apply the principles which are part of the procedural law of all civilized nations, and which are generally known as the principle of free valuation of the evidence (Freie Beweiswürdigung),

the outcome of this trial, as far as it is a question of the
guilt of the defendant Dr. Burrfield, cannot be doubtful.

I, therefore, have
to find the defendant Dr. Burrfield

not guilty

of the charges in Counts I, II, III, and IV of the indictment.

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CERTIFICATE OF TRANSLATION

3 June 1948

Fred Solomon, John B. Robinson, Adolph Lusthaus,
Joseph M. Gossert and Robert Hoffmann hereby certify
that we are duly appointed translators for the German
and English languages and that the above is a true and
correct translation of the Final Plea Duerrfeld.

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Joseph M. Gossert
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Fred Solomon
L-445622

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u n d

Prunella, Canadensis (Eulerian)

Case 6
Refuse

Flowing Statement

Delivered by

Colt "W"

Assistant Defense Counsel

on behalf of the Defendant

Dr. Fritz DACHAU

Case VI of the U.S. Military Tribunal

at Nurnberg

The United States of America

versus

"DACHAU and DACHAU"



Handwritten signature or initials.

May it please the Tribunal.

"Facing this Tribunal are private citizens of a conquered state being tried for alleged international crimes. Their judges are citizens of one of the victor states selected by its War Department. There may well be misgivings as to the fairness of such a trial. These considerations have made the judges of this Tribunal keenly aware of their grave responsibility and of the danger to the cause of Justice if the conduct of the trial and the conclusions reached should even seem to justify these misgivings. To err is human but if error must occur it is right that the error must not be prejudicial to the defendants. That, we think, is the spirit of the law of civilized nations. It finds expression in the following principles well known to students of Anglo-American law.

One: There can be no conviction without proof of personal guilt.

Two: The presumption of innocence follows each defendant throughout the trial.

Three: The presumption of innocence follows each defendant throughout the trial.

Four: The burden of proof is at all times upon the Prosecution.

"Ive: If from credible evidence two reasonable inferences may be drawn, one of guilt and the other of innocence, the latter must be taken."

By these observations, which left a deep impression upon us, Military Tribunal IV in the Case versus FLICK and others prefaced the first judgment ever passed on industrialists of a conquered country on the ground of violations of the principles of International Law. That an enormous amount of trouble, toil and energy could have been spared, if, throughout this second trial of German industrialists charged with violations of International Law, the Prosecution had always been aware of these fundamental principles imbued by a deep-rooted sense of responsibility towards the most cherished ideal of mankind; the spirit of justice. The Defense does not hesitate to say that then this trial undoubtedly would have presented itself in a very different light.

We do not deny that the Prosecution was willing to synchronize the presentation of their evidence with the above quoted basic rules of criminal proceedings adopted in all civilized countries in the world. However the Prosecution experienced the same fate as the "Mephisto's apprentice" of the famous German poet GOETHE; they did not succeed in getting rid of the spirits, they had called up, by charging in their Indictment in a summary manner all Defendants with Crimes against Peace, War Crimes and Crimes against humanity as well as participation in a Common Conspiracy, and by stating verbatim as follows: (quote:

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These crimes included planning, preparing, initiating and waging wars of aggression and invasions of other countries, as a result of which incalculable destruction was wrought throughout the world, millions of people were killed and many millions were suffered and are still suffering; deportation to slave labor of members of the civilian population of the invaded countries and the enslavement, mistreatment, terrorization, torture and murder of natives; plunder and spoliation of public and private property in the invaded countries pursuant to deliberate plans and policies, intended not only to strengthen Germany in launching its invasions and waging its aggressive war and secure the permanent economic domination by Germany of the continent of Europe, but also to expand the private empire of the defendants; and other grave crimes as set forth in this Indictment." End quote.

It seems a contrivance to raise a charge of such a gravity against men who were not members of the Government determining the history, or rather the fate of their country, but who were scientists, technical experts and business men of repute heading a big industrial enterprise respected throughout the world.

Final Plea GALT'S VI

In their endeavour to bear out their outrageous accusations, the Prosecution has amassed and submitted to the Tribunal an incomprehensible bulk of evidence of every possible kind. However to anticipate one thing, the Defense would say that this mass of evidence in the light of the observations of the IMT judgment and the abovesaid principles of criminal law appears to be in the inverse ratio of its relevancy in this trial under the different counts of the indictment. It is an old truth that to say little mostly means more than to say much and that the most conclusive proof getting to the very core of a matter always is the conciseest. Now, obviously, conclusive evidence can be introduced in a criminal trial only on the basis of clearly established facts showing an intentional and wilful violation of rules of Criminal Law. I do not wish to withhold my opinion that this is the deeper reason for the mass of evidence, introduced by the Prosecution, which to a large extent is irrelevant as far as the issues of this trial are concerned.

In an attempt to limit in a substantial degree the confusing mass of evidence presented in this trial the defense filed on the 17th Decemr 1947 a joint motion to the Tribunal, requesting that the evidence offered by the Prosecution under Count I and V of the Indictment and with reference to the alleged cases of spoliation in Austria and Czechoslovakia be determined irrelevant for legal reasons and the Defendants be acquitted of said charges.

The Tribunal sustained this motion as to the abovesaid cases under Count 2 without ruling however on Count 1 and 5 of the Indictment.

Therefore the defense is simply with the professional duties and not other duties than to deal in detail with the evidence introduced by the prosecution and to make known to the jury its opinion on purely legal grounds there would have been no need for referring it. Thus the evidence in this trial took on dramatic proportions. Your Honors, who faced now with the extremely difficult task to sift the chaff from the wheat, in their endeavor to facilitate as much as possible this task of the honorable Tribunal by concentrating on the gist of the matter at issue and by avoiding repetitions, the defense has entrusted certain counsel with the oral treatment of various general subjects. I too, shall refer to their arguments inasmuch as it is necessary, whilst for the rest I shall confine myself to examining the evidence presented under the different counts of the indictment as to the defendant GALTHERI, for whose innocence I stand up before this Tribunal with the utmost conviction.

As all his former colleagues, the defendant GALTHERI is charged with having committed a crime against peace and participated in a conspiracy for said purpose. Therefore the Prosecution's theory applies also to him, maintaining that the leading men of Forten had made an alliance with HITLER in full knowledge of his criminal aims and with the clear intent to expand their power as leading personalities of the German chemical industry and to extend their influence without scruples to those countries.

which, according to the alleged common plan had been selected as victims for HITLER's policy of aggression. The underlying historical error to this general thesis of the Prosecution concerning the part which the German industry played within the framework of the third Reich has been thoroughly dealt with in the closing statement of our spokesman Dr. DIX. If however I furthermore ask myself: whether and to which extent the Prosecution has established a participation of the Defendant CASE 51 in such alliance out of a ruthless craving for power, then I can but state that I honestly but without any success tried to find one single piece of evidence bearing out this contention. In summing up the results of my endeavours I can only say that nothing remains but the outrageous and unsupported contention advanced in the Opening Statement of the Prosecution with reference to all defendants: Quote,

"There is no loyalty in these men, not to Science nor to Germany nor to any discoverable Ideal"
End quote.

I think, the Defense has submitted to the Tribunal sufficient counter-evidence. All those who in the course of the presentation of the Defense-evidence made statements concerning Dr. CASE 51 describe him as a straightforward and upright man, who, imbued with the spirit both of humanitarian ideals and respect for every kind of scientific achievement, stood up for these ideals not paying attention to any political misgivings as far as this was possible under the terror-regime of the HITLER state. In particular, the statements of his former colleagues who were persecuted under the Nazi regime give ample proof of this attitude on the part of the Defendant CASE 51.

That all these statements were not construed subsequently and given as a special favor to the Defendant cannot be proved more emphatically than by the report on him to the Gestapo by a prominent Party Official aiming at his removal from Farben and containing a whole list of his sins against the spirit of National Socialism. The prosecution who obviously did not like this picture drawn of the defendant GALT'SKI, as not fitting in their theory, tried to implicate him in the case of the affiant GLENDORF of having denounced this former Jewish colleague of his, whilst in reality, as shown by the very documents introduced by the Prosecution, it was a request for a house search which to his greatest regret he felt compelled to apply for, on account of an information, he received from an agency of the Reich government. How else should it be possible that it was just he who undoubtedly contributed in a decisive manner to GLENDORF's release from prison and who gave him valuable assistance in the course of his emigration, a fact on which GLENDORF himself lays so much stress in his affidavit. One must have lived through the Nazi reign of ever-increasing terror to understand properly what risk it involved for a member of the Vorstand of Farben to write officially to a former Jewish colleague as late as in June 1939;

I do not object in any way to your emigrating and shall gladly give you any assistance in furthering your career abroad. The Prosecution would have hardly shown the above-described attitude in this particular matter, had they tried to realize what all this meant at that time for a man in the Defendant's position.

I cannot sum up on this short description of the Defendant's character, mentality and attitude more emphatically than by referring to the following words of the Affiant Professor Dr. MAX, Director of the Institute of Polymer Research in New York: Quote:

"While I had the occasion to work with Dr. SAJF I was always impressed as he being a man of great energy, high intelligence and of impeccable character. He was a hard worker himself, expected hard work from his colleagues and associates but was always ready to acknowledge achievement of others and give them the deserved credit. During the pre-Nazi years (1932-1933) he expressed himself repeatedly very strongly against an undemocratic dictatorship of any kind and was a firm advocate of democratic procedures and institutions. When the Nazis finally came to power, he did not openly stand up against them which one hardly could have expected him to do as he was a chemist and not a politician. He did however, in his domain, everything possible to reverse the effect of Nazi doctrines and racial discriminations. In particular he helped a great number of his Jewish and half Jewish colleagues to escape from Germany or he protected them from persecution and distress. In this endeavour to assist his friends he went sometimes so far as to risk grave consequences for himself. I had a number of discussions with him on the political situation in Germany and Austria between 1933 and 1936 and remember that he always expressed himself strongly for a return of Germany to a democratic government with free elections and for a complete abolishment of any racial or religious discrimination." End Quote.

It seems absurd if the Prosecution tries to make us believe that such a man entered into an alliance with HITLER in furthering with knowledge of his intentions his criminal policy of aggression. The Prosecution has not offered any proof that the defendant - due to his personal contacts with HITLER or any of his followers - ever was informed of the true aggressive aims of the National Socialist Government which they kept in deep secrecy from the public. Neither did he learn of such aims from any of his colleagues. This is not at all surprising, considering the fact that the IRT did not impute such knowledge even to a number of leading personalities of the Third Reich who were in direct personal contact with HITLER. It was therefore up to the Prosecution to prove that either the defendant himself or any of his colleagues with his knowledge was in alliance with HITLER on account of which he had more access to informations about his aims than these high Party- and Governmental Functionaries who were acquitted by the IRT of the charge of a crime against peace and a conspiracy for said purpose.

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It should be indisputably clear that the Prosecution is unable to establish such fact. In order not to be forced to drop its theory of a crime against peace and a conspiracy for said purpose, the Prosecution has erected an artful construction of alleged circumstantial evidence, but this construction lacks the most important essential part, namely the basis. Proof has been offered on the fact - which as for the rest never was disputed - that IG within the framework of the widely publicized German rearmament had to contribute in certain working fields to said armament just as well as numerous other German firms did. Any further contentions, particularly the allegation of the Prosecution, that the defendants from their participation in the German rearmament ought to have derived the knowledge of HITLER's aggressive aims, all this is mere speculation. As for the defendant G. J. E. S. K. I. he certainly did not draw any such conclusions and the Prosecution has not offered any proof to the contrary. How else could Dr. G. J. E. S. K. I. have started in the years 1938/39 on the construction of a big photographic factory at Landsberg, which was not supposed to be completed until 1941. The Prosecution is well aware of the fact that the production of Sparte III headed by him particularly lacked any interest under the aspect of war economy as this production concerned photographic products and textile raw-materials and that therefore Dr. G. J. E. S. K. I. was not linked up with questions of war economy. It is apparently for this reason that the Prosecution has completely misinterpreted the formal connection of Ignat-Höbel-Aktion-Gesellschaft with Sparte III and had made missing efforts in order to prove a knowledge by the Defendant of all details of the activities of this affiliated company in the field of production of military explosives

It is the position of the Defense that the evidence produced by them in the course of this trial clearly shows that neither the Defendant nor any of his co-defendants had such knowledge. However also this attempt of the Prosecution to establish the guilty mind of the Defendant under Count I and V of the Indictment in this roundabout manner is doomed to failure; for on the basis of the statements of authoritative experts made in this trial it was especially the production of military explosives and gun-powder which was completely insufficient at the outbreak of the war, and it was just at that time that a technical reorganization of the entire production-process in this field was demanded by the Army Ordnance Office which necessarily brought about a production-stop and a subsequent gradual re-commencement of such production. Therefore even in case the Defendant had been informed about all details of the activities of IG or its subsidiary company, the so-called Verwert-Gesellschaft, this would not have put him in the position to derive therefrom a knowledge of HITLER's aggressive aims.

In view of the fact that the Defense still holds that the entire evidence introduced by the Prosecution under Count I of the Indictment is for legal reasons irrelevant, I think I can refrain from dealing in a detailed manner with the respective evidence contained in approximately 40 document books of the Prosecution. Summarizing I would only point out the following:

It is not sufficient if the Prosecution in order to bear out their allegation of a crime against peace offer evidence on the fact that IG operated in fields of production - among others - which were of importance for the carrying out of the rearmament program and therefore entailed insofar a certain contact with the various agencies of the German Government interested therein.

It does not suffice if the Prosecution establish that IG played a remarkable part within the framework of the Four Years Plan on account of its position as the leading enterprise in the field of chemical production, being the art of the so-called synthetic process, that is the conversion of abundant and inexpensive materials into valuable raw- and working-materials.

Last not least it is not sufficient to show that also IG was made part of the VSB-plans of the newly created German Wehrmacht.

Already in its Opening Statement the Defense has most emphatically pointed out this deficiency regarding the evidence presented by the Prosecution under Count I, and I would even go as far as to maintain that the Defense actually could have stipulated on these points with the Prosecution. Recently there appeared a news-paper report on demands for VSB-plans in the United States of America. It is common knowledge that in the United States the greatest efforts are being made in advancing the exploitation of atomic energy for military purposes and in connection with similar activities in other production-fields of strategic importance. I hardly can conceive of the Prosecution concluding therefrom that all these activities are intended to serve the preparation of an aggressive war. Neither has the Defendant GAWELSKI

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and as such a collection of data that when similar activities were
being way in Germany.

Arrest of itself is not punishable, neither under the London
Charter nor under the provisions of Control Council Law No. 10 nor
according to the judgment of the I.T. a participation in "mercenar-
y" can be considered a crime against peace only if it was carried
out knowingly as part of the German plan to wage aggressive wars,
therefore necessarily with full knowledge of such plan. Not a single
piece of the prosecution's evidence gives rise to any indication
whatever of such knowledge on the part of the Defendant GLENN.

I do not propose to go any further into the just mentioned legal
problems. I may refer in this respect to the arguments of our
counsel Dr. V. STEINER who called once more to the Tribunal the view-
point of the Defense on these questions. Summarizing I therefore would
say that under the aforesaid legal aspects and on the basis of the
evidence the Defendant GLENN is not guilty of a crime against
peace.

Under Count II of the Indictment all Defendants are charged with having
committed war crimes and crimes against humanity in the meaning of
Art. II of Control Council Law No. 10 and implicated to have partici-
pated in plundering private and public property and other acts of
spoliation in countries which were invaded by Germany. In this
respect I may confine myself

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to referring to the detailed observations made on this subject by some of my colleagues. As far as the Defendant GJE.SKI is concerned the Prosecution has definitely failed to offer any evidence connecting him with any of the activities covered by this Count of the Indictment. No case/alleged ^{of} spoliation at all has been touched by the Prosecution which is linked up with this special working-field in IG. In addition Dr. GJE.SKI was a technician and for this reason alone negotiations with foreign business-partners were beyond the scope of his working-field. If therefore the Defense has offered evidence on the attitude of Sparto III coming under the Defendant GJE.SKI towards competitive firms in the occupied countries, this was done exclusively for the purpose to show the utter unsoundness of the Prosecution's position that all defendants - including the Defendant GJE.SKI - had approved of the alleged acts of spoliation and plunder. As shown by the evidence the attitude of Sparto III in this respect was absolutely correct. A statement by the managing directors of the biggest competitive firm in the photographic field, namely the firm OXLEY in Belgium, confirms this in an unequivocal manner. Just as well the relations to the firm Kodak-Pathe in Paris remained as friendly as they were before the occupation of France by Germany. This is confirmed by the witness FEINER who did not change his view-point inspite of all endeavors of the Prosecution to shake his statement in the course of his examination.

I shall now turn to Count III of the Indictment, which the Prosecution chose to style as

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"Slaveholders and Slaveholders". All defendants are alleged according to have participated in a gigantic scale in the enslavement and deportation of foreign workers and concentration camp inmates for slave-labor purposes. They are alleged to have used violence of war for purposes contrary to the rules of the Hague Convention and to have participated in the ill-treatment, the torturing, torturing and harboring of millions of enslaved persons.

This is - I say - the most serious and grave accusation which is really can be advanced against any man. However the alleged facts in which the Prosecution based these horrible insinuations show that - it is only - they must be qualified at least as heinous and ill-considered. And dealing with the evidence produced in this respect I propose to treat in the different problems taking one after another separately.

At the outset the Prosecution has tried to prove that all defendants have participated in an elaborate plan of deportation of foreigners to Germany for slave labor purposes. It is the position of the defense that the Prosecution has utterly failed to establish this allegation. They have proved - and this has never been contested - that foreigners and concentration camp inmates were employed as laborers in plants of IG. However the very detailed presentation of evidence has clearly shown that the so-called slave-labor program was initiated and carried out by the competent governmental authorities and the labor-distribution agencies under them. The Prosecution has not offered any evidence at all bearing out the fact that the Defendant G. J. B. H. participated.

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in any manner whatsoever in the initiating or carrying out of such program nor that he even approved thereof. The evidence introduced by the Defense clearly establishes the very opposite. Besides it would be utter nonsense to impute to the Defendant that he was in any way interested in the employment of foreign slave-laborers. His Defense has shown that the employment of foreign workers not only entailed heavy expenses, but apart from this considerable difficulties in his plants deriving from the fact that not only the majority of these foreign workers lacked the necessary technical experience, but that in addition the difficulties resulting from the difference of languages had a very unfavorable influence on the cooperation with the German workers and superiors. Accordingly the Prosecution has not offered any specific evidence implicating the Defendant GLENN personally in this respect. They have only alleged that the management of the Concentration-camps at Munich displayed a great activity in securing slave-laborers by dispatching representatives to concentration-camps for the purpose of selecting inmates who were fit for slave-laboring in IG plants. The Concentration-camps indisputably came under the jurisdiction of Sparte III headed by GLENN. Apparently the Prosecution deemed this to be sufficient reason for implicating Dr. GLENN in this respect. However the Prosecution failed to offer any proof that the Defendant GLENN participated in any way in the aforementioned activities of the management of the Concentration-camps or that he even had knowledge and approved thereof. That apart from this

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the real facts have been completely distorted by the Prosecution has been clearly shown by the statement of the manager who headed the Camera-works at that time and of his collaborators.

As far as the employment of foreign laborers and concentration-camp inmates as such is concerned, these facts in the opinion of the Defense never can justify a conviction of the Defendants under Count III of the Indictment for the sole reason of the legal provisions and particular circumstances prevailing in Germany during the war. The detailed evidence presented on this point shows clearly that the slave-labor program not only was initiated and set into operation exclusively by the competent governmental authorities, but that also all the details of the execution of said plan came under the jurisdiction of those authorities. The drafting of labor by compulsory measures had been already adopted in Germany before foreign workers - either on a voluntary or involuntary basis - were employed in the German industry. Accordingly no enterprise or plant leader was at liberty to either hire or discharge laborers. Contrary to this such laborers upon application were allocated by the labor-distribution-agencies of the Reich to the different enterprises. Decisive for these allocations was the size and nature of the production concerned as determined in a manner binding upon the individual industrial enterprises by the competent State authorities. The plant leaders were personally responsible for the fulfillment of the production quotas ordered by said authorities at the risk of considerable penalties being inflicted upon them in any case of non-fulfillment.

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Undoubtedly therefore any plant-leader who - as a matter of principle - refused to employ in his plant forced laborers from abroad ran the risk that such attitude would be considered an act of sabotage.

It is therefore the position of the defense that although the DMT adjudged as criminal the slave-labor-program nevertheless the employment of forced foreign laborers cannot be imputed to the plant-leaders as a crime against humanity, to whom such laborers were allocated by the governmental labor-distribution agencies for the purpose of filling the production quotas imposed upon them. Military Tribunal Nr. IV in the case versus FLICK and others has thoroughly dealt with this problem and has expressly ruled that undoubtedly it would not be in keeping with the true sense of Art II para 3 of Control Council Law Nr. 10 to deprive the defendant of the defense of necessity and that the provision of para 4 b) of said Article does not serve such purpose either. In this connection said judgment expressly refers to a passage in WHARTON's Criminal Law saying: Quote:

"Necessity forcing man to do an act justifies him, because no man can be guilty of a crime without the will and intent in his mind." End quote.

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It is the position of the Defense that sufficient proof has been offered bearing out the fact that such defense of necessity undoubtedly is available to all defendants in view of their obligation to fill the production quotas ordered by the State which again was only possible by employing among others also foreign laborers and concentration-camp inmates allocated for said purpose by the labor-distribution-agencies. This state of duress prevailed with every German industrialist and left him no other choice than to employ - among others - also forced laborers from abroad in order to secure the risk of his personal freedom or even his life. In their just mentioned judgment Military Tribunal IV describes the peculiar position of the German industrialists in a manner which is concise and to the point: Quote:

"The defendants lived within the Reich. The Reich through its bodies of enforcement officials and secret police, was always "present" ready to go into instant action and to mete out savage and immediate punishment against anyone doing anything that could be construed as obstructing or hindering the carrying out of governmental regulations or decrees." End Quote.

The Prosecution has not established in any way that the situation in which the defendant GAJEWSKI lived at that time differed from the aforementioned facts. On the other hand the Defense has established that the defendant not only was in the same position as every German industrialist, but that in addition he was exposed to a particular danger in view of his reported frictions with Party- and Government agencies.

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Once more reference is made to GAJEWSKI Exhibit Nr. 1, namely the report on him to the Gestapo which in a particularly striking manner demonstrates those frictions, moreover to the statements of his former collaborators who were persecuted by the Nazis and to those of the witnesses HARTMANN, DUNST and van BREE on the negative attitude of the defendant in the face of extreme tendencies of the competent governmental agencies displayed in the field of the production of textile raw materials on the ground of furthering as much as possible the German autarky, last not least to the statement of the witness SCHNEIDER who testified that it was the defendant GAJEWSKI who was engaged in continuous struggles with Party-agencies. If the defendant GAJEWSKI, despite of objecting thereto on principle, acquiesced to the fact that forced foreign laborers and concentration-camp inmates were employed in the film-plant of Wolfen headed by him, this is exclusively due to the situation prevailing in those days and the particular danger to which he personally was exposed. Therefore in the opinion of the Defense he may fully avail himself of the plea of necessity.

The Prosecution in presenting their evidence apart from the just mentioned film-plant headed by the defendant, has also dealt with some other plants coming under his jurisdiction as head of Sparte III of IG. The Defense would make the following basic remarks on this point: The local plant-managers and not the defendant were the plant-leaders in the sense adopted by the Law of National Labor. The defendant was responsible for the plants coming under Sparte III, in particular as far as technical questions were concerned. However with regard to questions of the employment of laborers only industrial plant-managers in their capacity as plant-leaders and under the provisions of the just mentioned law were responsible to the labor-distribution agencies.

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As a matter of actual practice, they were in this field absolutely independent. No other arrangement would have been possible as the plants in question were dispersed all over Germany, and in some instances, were situated at a distance of hundreds of kilometers from Wolfen. Accordingly they came under the jurisdiction of labor-distribution agencies different from those supervising the plant of Wolfen where the defendant had his office. Consequently decisions in matters of the employment of labor quite naturally had to be made on the spot by the local plant-managers themselves in an independent manner. That also these men could not refuse to employ forced foreign laborers, concentration-camp inmates and prisoners of war allocated to them by the labor-distribution offices need not to be explained once more in view of the aforementioned arguments. This particularly holds true with regard to the employment of female convicts and concentration-camp inmates from Ravensbrueck in the Caspers-works at Muehlen which was not to be attributed to any initiative on the part of its manager as alleged by the Prosecution, but who were allocated to the Caspers-works as shown by the Defense-evidence.

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As for the rest I may point out that in the opinion of the defense the defendant having been occupied to the very limit of his working capacity as technical chief of Sparte III of IG and head of the large enterprise of the Wolfen-Film-factory with 12,000 employees and workers, could and did discharge his obligation to supervise the other plants of his Sparte only to the extent of placing at the head of those plants capable men who had lived up to their tasks for many years of service with the firm and whose technical and personal qualifications had earned them his confidence. Thus the defendant could be assured that these plant-managers would behave correctly in matters of the employment of labor as it has been actually the case according to the evidence offered by the defense.

This brings me to another count of the indictment charging Dr. GAJEWSKI as well as the other defendants with having ill-treated foreign laborers and concentration camp inmates and thus having committed crimes against humanity. With due respect to Your Honors, I would stress most emphatically that this incrimination by the Prosecution has deeply hurt the defendant. The evidence produced by the Prosecution in support of this monstrous charge under Count III of the Indictment and the heading "Enslavement and massmurder" with regard to the defendant GAJEWSKI is so poor that I do not hesitate to call these contentions in view of the attitude displayed by Dr. GAJEWSKI frivolous. The evidence of the Prosecution itself shows that during the last years of the war, owing to a shortage of German labor, something between 4000 and 5000 foreign laborers were employed in the film-plant of Wolfen. In addition hereto there were another several thousand foreign workers

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employed in other plants of Sparte III which were not directed by the defendant himself. Although the Prosecution had ample opportunity to carry out thorough investigations in those countries from which these workers originated and although the Prosecution had undoubtedly availed themselves of said opportunity, they were able to present only one single affiant, in order to support their grave charge of ill-treatment of foreign workers by the defendant, namely the affiant van Mol. If the requests published in foreign newspapers or spread about over the radio among all these thousands of foreign workers who were employed in the Wolfen Film-Factory or in other plants of Sparte III, have produced but this one single affiant who testifies on the alleged ill-treatment of foreign workers in the film-factory, then there should be no need after all to treat such an implication in a serious light. However in view of the fact that the defendant feels deeply hurt by the charge that in his plant foreign workers were ill-treated, badly housed and fed and unscrupulously exploited, the defense who concurs with him has introduced ample evidence showing that the allegations of the Prosecution and the affiant van Mol are untrue and that the conditions prevailing in the Wolfen film-plant were the very opposite of these contentions. As far as the affiant van Mol is concerned, his wage-card and sick-report prove

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that his statement regarding his working-hours at Wolfen and the alleged lack of medical treatment is a deliberate lie. If this affiant in his affidavit goes on to speak of ill-treatments, bad housing and extremely poor food, then the abundant proof offered by the defense should suffice to establish, that again these allegations of the affiant are untrue, that on the contrary everything was done for the foreign workers as far as this was possible under the ever-deteriorating war-time conditions. I would mention here only a few striking points. If the Prosecution contend that the quarters of foreign workers were entirely insufficient, how then would they explain the fact that from 1940 until the beginning of 1945 in the Wolfen plant alone, 8.2 million Reichsmark were spent on the construction of these quarters according to the information gathered by the affiant RIJSS from the official data of the requests for credits submitted to the TLM. This sum even should be increased by 10 to 20 per cent as stated by the Affiant if expenditure entered in the books under production costs is added. The total expenditure of Sparte III for the construction of quarters for foreign workers amounted during the same period to about 12 million Reichsmark. The equipment of these quarters is described in detail by the affiant BOSCH who himself was in charge of the setting-up of these camps. They had heating, electric light, adequate wash- and shower-installations, kitchens and all other additional equipment such as sickrooms, workshops and canteens, and that at a time when hundreds of thousands

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of German families were living in wretched emergency quarters after having been deprived of their homes. As to the food-situation it will suffice to refer to the report submitted by the Wolfen factory to the Military Government at Bitterfeld after the collapse wherein the rations distributed among the foreign workers in the camps are compiled on the basis of the files of the Social Welfare Department. The report shows that the average rations exceeded those distributed among the German population at that time. As to the clothing of the foreign workers, the evidence shows that the film-factory did its very best to procure additional clothing for the foreign workers. In connection with the alleged ill-treatment of foreign workers the affiant Mr. Mol has mentioned the names of two former employees of the film-factory. One of them who was doing scientific work in a laboratory for color-films, had no direct contact at all with foreign workers and has stated under oath, that he never ill-treated any such workers. The same holds true with regard to the second man, a chemist who headed an artificial silk plant.

The subject of medical treatment is dealt with in the affidavit of the plant physician who to this very day occupies this position and who stresses that as to the physical health and working ability the same standard was adopted as in the case of German workers and that in cases of illness the plant physicians as well as the medical installations of the film-factory were available to foreign workers to the same extent as to Germans.

A striking example of the methods adopted by the Prosecution is their allegation that the film-factory had submitted to the FBI a request for a credit for the construction of a hut of approximately 1,500 square-meters which allegedly was intended to house 2,000 persons. A cursory inspection of this request for said credit would have sufficed to show to the Prosecution that this was not a living-hut but intended to be used for dressing, washing and feeding, and that for said purposes it was to be used by one of three shifts at a time.

I think that these brief observations suffice to show that the statement of the only Prosecution witness testifying on the alleged ill-treatment of foreign workers in the film-factory at Wolfen is false and untrue from the beginning to the end. The priest of the Wolfen community who in his capacity as minister frequently had private talks with foreign workers of all nationalities testifies that they neither before nor after the collapse ever complained about the work, treatment, housing or food in the film-factory. I now quote the following passage from his affidavit:

"I have the impression that the Filmfabrik did everything possible. To give an example: as soon as a batch of several hundreds of Polish girls arrived, the film-factory informed the Pastorate and asked to be notified as to the hours of the church services. At first arrangements were made for a special Sunday service. Later on, by order of the Political Police, only one church service could be held every four weeks. But the film-factory did not have anything to do with such measures. The same was also true of other fields.

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The plant-management of the film-factory, beyond all doubt, did everything in order to ensure that the foreign workers could live as human beings and were treated as such." End quote.

I think that nothing is to be added to these words of the Catholic priest of Wolfen whom even the Prosecution hardly can suspect to judge human dignity under a double aspect.

As to the other plants coming under the jurisdiction of Article III, the only example of alleged ill-treatment of non-German laborers which apparently the Prosecution felt able to adduce is the employment of Russian prisoners of war on the building site of the plant of Landsberg. The Prosecution has submitted in this respect a correspondence between the plant-management and the military authorities who were in charge of the camp in which the prisoners of war in question were kept. At the outset it should be pointed out that according to the statement of General Westhof, the former chief of the department of the German High Command under whose jurisdiction such matters came, the competent agencies of the Wehrmacht alone were responsible for the treatment of prisoners of war, including their medical treatment. Furthermore the evidence introduced by the defense clearly establishes the fact that the poor state of health of these prisoners of war, who for their greater part could not be employed for any work at all, has to be attributed exclusively to omissions on the part of the competent Wehrmacht authorities and not to any negligence on the part of the management of the Landsberg plant who on the contrary - as much as this was possible within their sphere of influence restricted by the exclusive competence of the Wehrmacht authorities - had done their best to supply the prisoners of war with additional food. As for the rest the evidence shows that the defendant GAJEWSKI was contacted on this matter

not before the negotiations between the plant-manager and the military authorities with a view of an immediate improvement of the conditions of the camp had come to a complete deadlock and therefore the plant-manager considered Dr. GAJTSEVI's intervention indispensable. Thereupon the Defendant immediately took up the matter and saw to it that the Executive Chief of the Gaps in Berlin intervened. However, shortly thereafter the prisoners of war were withdrawn from the Landsberg plant.

For completeness sake I would remark that the employment of these prisoners of war was in full keeping with the rules of the Hague Convention and that even the Prosecution has not alleged anything to the contrary, neither with regard to the Landsberg case nor to other cases of employment of prisoners of war in the film-factory or in other plants of Sparte III. Besides only very few prisoners of war were employed in these plants.

Before concluding my arguments under count III of the Indictment I may make one last observation. Not only in the Landsberg case but also in no other instances has the Prosecution been able to establish that the Defendant GAJTSEVI personally was involved in any ill-treatment of foreign laborers nor that he knew or approved thereof. For this reason alone I cannot discover any legal aspect under which the Prosecution is able to justify its charge of a crime against peace against the Defendant GAJTSEVI. Once more reference is made to the fundamental principle of Anglo-American law as well as of the law of all civilized

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nations that nobody can be convicted unless his personal guilt is established. The Prosecution in this respect has only alleged that the defendant GAJDOSKI was "responsible" for all happenings at Wolfen and in the other plants of Goette III. This can only be understood in the sense that the Prosecution is charging Dr. GAJDOSKI with a punishable omission in violation of his duties. However, a punishable omission first of all presupposes that a wrong has been committed. Even this prerequisite has not been proved by the Prosecution. Not even if one accepts the thesis of the Prosecution for a moment, it has not been established at all that the defendant GAJDOSKI has wilfully and intentionally omitted to prevent a crime committed by a third party, and that it was his duty as well as in his power to do so. On the contrary the evidence submitted by the defense has shown that due to the principles of social welfare to which he adhered from the bottom of his heart he never would have tolerated any grievances in this respect, because to use the words of the affiant Forchmann he saw in every foreign laborer first and foremost a human being who deserved a humane treatment. Consequently the defendant according to the statement of his collaborators had stressed time and again this principle and had instructed them accordingly to do their best in order to make life for the foreign workers, far from home, as pleasant as possible.

The same applies to all the other activities outside the scope of the working-field of the defendant covered by the indictment, especially the employment of concentration-camp inmates in the bus-plant of Auschwitz, the so-called medical

experiments on concentration - camp inmates and the supply of poison-gas for their extermination by the "Dagstuhl". The Prosecution has not established in any way that these alleged activities had been brought to the knowledge of the defendant respectively that this has been done in such manner so as to cause misgivings on the part of the defendant as to whether or not these activities were objectionable.

Only in such case however there would have been a duty on his part to intervene which, if wilfully and intentionally violated, would involve a punishable omission.

In this connection I may point out that the evidence offered by the Prosecution under Count I, II and V of the Indictment is irrelevant for the same reason.

The Prosecution in Part VI of their preliminary Trial Brief have merely stated that the fact that some of the defendants actively participated in some of the crimes covered by the Indictment does not take away from the joint responsibility of the other "Verstandespersonen" of IG and that this principle in their opinion is sufficient to establish the criminal responsibility for all activities charged as crimes in the Indictment.

Once more I would most emphatically stress that this does not suffice in any case and with regard to any count of the Indictment.

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In this connection I now refer to the elaborate observations made by Dr. V. VITTEL on this subject on behalf of all defendants in his closing statement,

Dr. GALTENSKI is not indicted under Count IV. Therefore I need not deal with this Count of the Indictment.

As to Count V of the Indictment I have already pointed out in the course of my observations under Count I that on the basis of the character and personality of the defendant a charge of such a conspiracy raised against him appears just as absurd as the allegation that such a conspiracy existed among the other defendants.

I therefore respectfully submit,

that the defendant is not guilty under any Count of the Indictment.

Your Honors,

Every war entails cruelty and, beginning with the earliest conflicts in the history of man up to the world wars of our times waged with all the modern weapons of destruction, atrocities and arbitrary actions have always been its inevitable consequences. Shall wonder then that the call for revenge on the defeated enemy is sounded. But this call must not drown out the voice of Justice demanding that only the guilty be punished.

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It was not the defendant's guilt but his destiny which in times of terror and war-time confusion - law behind us - placed him among those who headed a large German industrial enterprise. The Prosecution wish to see him punished for this, then it leaves the hands of Justice and is motivated only by feelings of revenge and the desire to establish the collective guilt of those Germans who held important positions in the economic life of their country.

After a trial lasting almost a year, it is the grave responsibility of this Honorable Tribunal to examine and to weigh, since law is at stake, the enormous material and the vast quantity of documents. We pray that your Honors bear in mind, that, after the long years of terror and dictatorship, this unfortunate people is filled with deep craving for Justice and that this Honorable Tribunal can help us to regain our faith in Justice.

Final Exam, Examinations (Examinations)

Case 6
Defense

MILITARY TRIBUNAL VI
CASE VI

FINAL PLEA
for
Dr. Heinrich GATTISBAU

submitted by
Rudolf ASCHENBACHER
Counsel for the defense

copy



FINAL PLEA GATTISOU

Mr. President! Honorable Judges!

A question which must be raised after the occurrence of a catastrophe is that of its causes, and for years the prosecution has been submitting to the Courts the query: "What led to the Third Reich?" Inherent in this question is the establishment of blame for the Second World War. Various theories have been brought forward by the Prosecution. At one time the Generals helped Hitler to power, then again it was the officials and diplomats. In other trials, as in the one under discussion, it was the German industrialists. In viewing and estimating as a whole the picture which the Prosecution endeavors to present, the large-scale attempt to charge the so-called German leading class with the sole blame for the events of 1933 to 1945 becomes apparent. Such an attempt has been made once before in modern history: in 1919. More than 25 years had to elapse before, in the archives of the Belgrade government, was found the document which was decisive in clarifying the question of war-guilt in connection with the first world war. In his written confession dated 28 March 1917 the Serbian Colonel Dimitrijevic avowed that, in agreement with the Russian Military Attaché, he induced Rade Malobabic to organize an information-service in Austria-Hungary. He confessed in the following words: "Before I arrived at the final resolution that the murder should be committed, I asked Colonel Artamanov for his opinion..... Artamanov answered that Russia would not fail us". It is also clear from this confession that the Russian Military Attaché, Colonel Artamanov, supplied the funds for the remuneration of the murderers of Sarajevo.

More than two decades had to elapse before this question was clarified. How many years will pass before the true background has

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been revealed of the years 1933 to 1945!

The rejection, by the Court, of the objection raised by the Prosecution against GATTISBAU Exhibit No. 135 and No. 145 must be viewed in the nature of a decision implying that the isolated consideration of the Duernberg defendants' guilt in the events of the "Drittes Reich" is contrary to reason. This impression is rendered more intensive in contemplating the nature of the documents which have been accepted by the Court in Document Book DUEKREIT No. XVIII.

For the impartial examiner of the question: "How and why was there a Drittes Reich and a Second World War?" this also indicates a delving into the events leading to the development of National Socialism. Unencumbered by prevailing prejudices, this remarkable historical epoch, which might be called capitalism, should be viewed comprehensively and with the full understanding that we have reached a turn in the tide of events. Outward signs of it are the so-called capitalistic crises. Up to the First World War, they could be set down as growing pains. Subsequent to the First World War they developed into regular functional disturbances. Two major crises, those of 1920/1921 and 1929/1933, brought about the economy downfall.

1929: That took place on the world markets was an event without precedent. At the turn of the year 1929/30, prices then finally sank to great depths.

To this must be added the Russian problem as one of economy. Bolshevik, state-capitalistic Russia more and more developed into an actual counterpole to the Western system built up on private capital. Eliminated as world market on the one hand, Russia on the other hand, appears on the world's money markets as a counter-

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speculator in the world economy crisis. In this connection it may suffice to state that a Russian offer of 5 million bushel was sufficient to disorganize the whole Chicago wheat-market which has an average daily turnover of 100 millions bushels. As an additional example may be mentioned Russia's attitude on the platinum market, as also the question of the Russian dumping. This may suffice as an outline of the general economic conditions during the period of 1920 to 1930.

The German Nation is particularly concerned with the consequences of the Versailles Treaty and the latter's arbitrary boundary-decisions violating the sovereign rights of the peoples. In his book "Europe without peace" the former Italian Premier Francesco Sitti (DUNERFELD-Exhibit No. 429) writes as follows - I quote:

After the victory of the Entente the microbes of hate have taken their characteristic developments: national greed, imperialism and the mania for conquest. The vanquished peoples - among them Germany - have had a peace forced upon them which is tantamount to a prolongation of the war. The total loss for which Germany has the Treaty to thank exceeds anything that can be foreseen; it may only be looked upon as an intentional method of bringing about the destruction of an entire people. Considered from a moral standpoint the treaties recently concluded mean an unspeakable act of retrogression; for with them the culture of Europe has regressed to a state which, as was believed, had been left behind many centuries ago. Furthermore, they constitute a danger. If everyone abandons himself to a degree of vengeance which he believes is his due because of the wrong he suffered, if it is kept in mind that the vanquished of today may be the victors of to-morrow, into what an abyss of brutality, immorality and degeneration will Europe finally be plunged? End of quotation.

8

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Wherever serious complications arise in connection with grave functional disturbances of an organism, judicious medical authorities are prepared for the worst. This complication in the capitalistic order existed as a result of the Versailles Treaty: namely German reparations. Dr. Gustav Cassel, Stockholm, in his thesis "The World's Monetary Problem" (JENSENFIELD Exhibit No. 427) writes as follows, I quote:

"The effect of the reparations is extremely unfortunate and damaging, it is possibly the greatest obstacle to the economic recovery of the world, which, in itself, is of far greater interest to the Allied countries than any reparation". End of quotation.

It was the fate of the vanquished that Germany already had to pay heavily at the time of the armistice at Compiègne. Gold, locomotives and railway-coaches rolled across the frontier, the whole commercial fleet was surrendered. Right - such was the fate of Athens, Carthage. Alsace-Lorraine was surrendered. Right, such had also been the fate of France in the long, century-old tragic struggle for the Rhine. The eastern provinces and the colonies were lost - for this too, examples may be found. Twenty billion marks worth of German property abroad were seized and liquidated - here I hesitate. This is an event without precedent: France, in 1871, sold part of her property abroad voluntarily in order to pay for her war indemnification; but for Germany this only marks the beginning of her real war-indemnifications, called reparations. They are based on approximately the following reasoning: First of all, Germany destroyed whole areas and must pay for their reconstruction; secondly the victors in this holy but expensive war have contracted serious debts which must be charged to Germany as the vanquished. And thus the struggle to meet its obligations ("Erfuellungspflicht") begins in Germany, a struggle which also becomes decisive for the year 1933 and which is best circumscribed by the name of

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Dawes and Young plans. Its characteristics are debts, impoverishment, excessive foreign influence and a selling-out. The English paper "Manchester Guardian" 1931 (DERRFIELD Exhibit No. 432) rightly describes the situation in the following dry terms: - I quote:
"..... It is a phantastic and horrible dream to weaken Germany through an enormous burden of reparations which keeps this country constantly on the verge of collapse and bankruptcy. Such a policy is bound to fail not merely in view of the revolt of the rest of the world against a grotesque situation but because of resistance by the German nation itself." End of quotation.

In passing, the German East- and the minority-problem should also be mentioned. That chauvinistic statements by Polish and Czech politicians had to cause a reaction is only natural. I need only quote a few passages to make this comprehensible.

The Polish paper "Gazeta Dzienna", No. 82, dated 11 April 1936 writes as follows; I quote:

"We can with facility arrive at an agreement with Russia and direct Russia's thirst for expansion towards Delhi and Calcutta, whilst we ourselves steer a course for Eoenigsberg. Poland's natural boundary in the West is the Oder.... our present slogan is: From Stettin to Polangen. Germany is defenceless." End of quotation.

Clearly and distinctly the "Poznaner Dziennik", during the same period of time, rejects any reconciliation with Germany - I quote:

"The only relationship possible between us and them (the Germans) is that of hate and combat. The Germans who think that a policy of honest, even important concessions could alter this fundamental relationship, are mistaken." End of quotation.

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In this connection another quotation of the Czech Minister Badiš:

"According to the peace treaty we have the right to arrange our affairs in such a way as if our nationalities did not exist at all. We do not need to negotiate or to compromise with anybody." End of quotation.

In economy and politics, the German Reich, weakened and struggling as a result of the Versailles Treaty, was located between two central forces, viz. the Western Capitalistic creditor states and Bolshevik Russia with its expanding influence. It is understandable that a movement had to come into existence under the conditions described.

The new ideas that were assailing Western Germany were of a marked national and social character. On the one hand there was the "West" comprising the entire complex of capitalistic mentality which, in continuous development of events starting from the renaissance stresses: free trade, gold standard, world trade, an international merging. On the other side there were the vague strivings of new ideas - borne of a material mental attitude - which, due to the wideness of the space and the depth of the movement, everywhere assumed different, and apparently unrelated forms, such as: social adjustment, liberation from debts, from "the slavery of interest payment" (Zinsknechtschaft), doubts about gold and monetary values, the right to work and - above all - to live; the grouping together of national folkdom, economy for the supply of all requirements, authority of the state, efforts to obtain "national economic space". Between the two centres lay "the intermediate Europe", above all Germany, pulled about by both sides, swaying about without support, disunited. The cleavage affects both the people and politics. Passionate discussions take place about the question for which side one should decide. This all the more so, since Germany - being the biggest debtor-country on the basis of the

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Versailles Treaty - was exposed to the strongest influences in the struggle of these forces.

In "Deutsche Rundschau", edited by Dr. FEGEL, the former Reich Chancellor Dr. Heinrich BRUNING published an account of the development of the political situation in the years 1930-1933. BRUNING no doubt pointed out many things which were unknown to us. The important point of his account is and always will be his recording - without making any accusations - of the unfortunate sequence of political events in Europe and the world which caused National Socialism to gain power. BRUNING spoke very clearly. However, his candid speaking remained without response - except for Stenrofer.

In this connection I could discuss how National Socialism was also supported in the West. I had before me the special publication "Les Marchands de cannes" by Crepouillet which reads as follows - I quote:

"The Hitler movement was also financed... by Pintsch, a Berlin firm controlled by Vickers, which kept an agent in the headquarters of the agitator from the very first day." End of quotation. I could speak of reports sent by the Embassy in Rome to the Foreign Office around 1930, concerning foreign payments to the NSDAP. I could also speak of the assistance rendered by Sir Henry Deterding, Hoarst and Rothermere. I could also raise the question which Ladislas Farago put under discussion in a New York paper on 2 November 1938, namely: What policy in regard to Hitler was decided upon by Montagu Norman in spring 1934, in company with Sir Alan Anderson, partner of Anderson, Green & Co., Lord Steno, President of the LMS railway, E. Shaw, president of the P. and O. steamship line, Sir Robert Kindersley and Charles Hambro. In this connection, however, I should not refrain from mentioning

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that, as was revealed by the trials of the IMT, Sir Henry's support was not intended so much for Hitler. Since, however, no uniform and direct line is given here and since one cannot speak of a decisive causal connection with the origin of world war II, I will only establish the given facts of the matter.

In 1930 Alex Radé published an "Atlas for politics, economy and labor-movement" through a communist publisher in Berlin and Vienna. One of his maps was also to illustrate the diplomatic relations of the Soviet Union with the rest of the world. According to this potentious announcement the reader expected to learn of a small-scale network of connections and ties spread over all parts of the world. Instead of this, the text started feebly with the words - I quote:

"Even after its ten years' existence, the foreign political position of the Soviet Union is still extremely difficult." End of the quotation. In fact the red of the USSR only attained the outer Mongolia and Tann Tuva, both its official allies. A slight tinging, however, was also discernible in the "revolutionized national" states, amongst them the German Reich.

The inclusion of the German Reich in its sphere of power was one of the most important aims of the Soviet Union. For this reason, revolts instigated by the East broke out in the most various parts of Germany in 1919, 1920 and later on. These advances of the Bolshevik world revolution against the West collapsed. The rulers of the Kremlin drew their conclusions from these experiences. They were convinced that it would be difficult for them to bolshevise Germany by the direct method i.e. by communist revolts, unless the economic situation in Germany became worse and led to a catastrophe. Therefore they changed their tactics. It is true, they supported the Communist Party of Germany on the one hand,

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yet they also started to include the German Nationalism in their plans. At first they tried to initiate discussions with important German circles through the medium of trade politics. To the German partners the economic prospects were painted in bright colours. After the conclusion of the Rapallo-agreement, an agreement was then arrived at between generals of the German Reichswehr - as far as they were concerned with foreign policy - and of the Soviet Red Army, which had to choose cooperation. It is a fact that on the part of Germany, arms - prohibited by the Versailles Treaty - could be tested and produced on Russian territory. In addition to this, close cooperation was reached in regard to questions of training the Red Army.

On this account, in the course of the IMT trials, I visited one of the responsible men under whose auspices this cooperation was started. To my question, as to why Germany had acted in this way, he replied: "The Versailles Treaty completely isolated us from the rest of the world. We were grateful for every possibility offered to us by which we could break through the political and economical isolation". End of quotation. At that time he was not aware of the consequences of this policy.

The Tribunal has accepted exhibit No. 136. From this it is evident that prior to the decisive election on 14 September 1930, forty million goldmarks from the secret Reichswehr funds were placed by General von SCHLEICHER at the disposal of Hitler for financing the Party and the electoral contest at Stalin's request. It is apparent from the Exhibit that by supporting Hitler, Stalin expected the German policy in regard to foreign and military affairs to become very active.

When I had this document before me, I was surprised at this very clear Russian intervention on behalf of Hitler.

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However, as time went on, I received more evidence to the effect that Moscow not only failed to prevent HITLER's seizure of power, but actually supported it. I came upon publications, which were the outcome of Russian agents' reports, and STAMPER's affidavit came into my hands. Undoubtedly, the High Tribunal will contend that these are cumulative documents. But they leave no doubt that exhibit No. 136 shows the actual political line leading to HITLER's seizure of power and the second world war.

It will be asked why this was done.

On 27 April 1947 Lord HAILLY wrote in the Sunday Times under the heading "Stalin's Main Lamp" - I quote:

"All over the world people are asking, why the Russians, wonderful allies during the war, are not cooperating better in peace.

The solution of this riddle is to be found in Stalin's book: "Problems of Leninism". Stalin foresees three revolutionary stages:

The first covers the time from its "conception" in 1903 up to its birth in October 1917. The second phase from 1917 onwards was dedicated to the consolidation of the new regime and its development as a starting point for the overthrow of imperialism throughout the world..... This was not a short-term policy. Lenin describes it as a "whole historical epoch", and Stalin adds that it would be "filled with civil wars and external conflicts, incessant organization work and economic reconstruction, advances and retreats, victories and defeats." End of quotation. The support of Hitler and the KPD comes into this period. It is significant that the NSDAP and the KPD both pursued the same negative line regarding the Weimar Republic. In Germany's domestic affairs Moscow could count on civil war and

chance by supporting the two extremist parties. But if this calculation did not work out, an age of external politics would be played, which to the Kremlin meant war and the subsequent collapse of the political and economic order in Central Europe.

At an earlier point in my thesis I have quoted the sentence spoken in 1930: "The Soviet Union's position in foreign politics remains extremely difficult even after 10 years of existence."

End of quotation.

In Hitler's seizure of power, Moscow expected to find an opportunity of introducing a new phase for its foreign relations, and thus to gain new platforms for the inner-political Soviet infiltration. In anticipation of forthcoming events in Germany, a Polish-Soviet pact of non-aggression was signed on 23 July 1932 and this was the prerequisite for the French-Soviet pact of non-aggression of 24 October 1932. Ever since, Foreign Commissar LITVINOV appears regularly in Geneva, though not yet as representative of a member state. Nevertheless, by within two years he has managed to be so far recognized that on 18 June 1934 he succeeds in removing the last obstacle in Geneva to Prague's formal recognition of the Soviet Union. With TITULESCU ends the 17 year-long of greatest reserve on the part of Roumania toward Moscow and on that same 18 June 1934 Bucharest has to admit a Soviet ambassador - for the old Tsarist diplomats there remained only the presidium of the Eastern-Committee. On 16 September the place at the round table in Geneva is free.

The admission of the Soviet Union into the League of Nations and the German-Polish rejection of the Eastern Pact were the prerequisites for the French-Soviet protocol of 5 December 1934, the de jure recognition of the USSR through Prague and Czechoslovakia's joining this protocol on 11 December.

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The French-Soviet pact was accordingly concluded on 2 May 1935 and on 16 May Bando and Alexandrowski signed an identical pact in Prague. On this basis it was easy for the Soviets, with the aid of the Comintern, to bring about, through Ambassador Potemkin, the exchange of diplomatic representatives with Belgium, which, together with Switzerland, Yugoslavia and the Netherlands had only the previous September, protested against the admission of the USSR into the League of Nations, and refused to enter into relations with her. Just after that, on 26 August 1935, Potemkin's negotiations via Paris, resulted in the appointment of a Soviet Ambassador to Luxembourg also.

These diplomatic opportunities for the Soviet Union were the outcome of Hitler's decision to go to war, and of the policy suggested of him by Germany's neighbors. A further inevitable consequence of Hitler's decision to go to war, so far as we were concerned, was that the Czech Republic was vacant and the Kremlin drew closer to Czechoslovakia, inasmuch as Czechoslovakia abandoned the principles of Chamber's realistic foreign policy. The outcome was fortification of this is the Soviet-Czech pact of alliance ratified on 16 May 1935, which for the first time gave the Kremlin access to the heart of Europe. Today we grasp the significance of that year 1935, when we reflect upon the events of 1940, and see how astutely the Kremlin's calculations worked out.

That the Comintern was aware of the significance, which its position assumed for Czechoslovakia in 1933, is proved by Gattinzu Exhibit 116. It was not for nothing that the present Secretary General of the Communist Party, Stenski, emphasized - I quote:

"The Communist Party of Czechoslovakia is conscious of its international

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responsibility towards the international proletarians. It puts before the proletariat the perspectives and goal to seize Czechoslovakia as the bulwark of the Soviet Union, a bastion and focal point of the proletarian revolution in Central Europe." End of quotation.

Not for nothing, did "Rote Freie", the leading Communist paper, write (Gettinen Exhibit I., 145) - I quote:

"The Communists advance imperturbably towards our destination the Soviet Republic, which will be presided over by Wlodek Gittwald.

In the conviction that the interests of the proletarian class struggle and the success of the proletarian revolution call for the indispensable precept that in any country only a united mass of workers may exist the Communist Party will be given the order to seize the initiative in quest of this unification." End of quotation.

The phrase, which in connection with Hitler's accession to power in 1933, led to the second world war or so-called "second imperialistic war" in 1939, has been dealt with in the US Foreign Office publication "Soviet-Soviet Relations", so that I need not elaborate thereon within the thesis "Background of Hitler's Access to Power".

It was necessary to give this sketch of political developments, in order to enable us to examine the assertion of the Prosecution that IG Farben had concluded an agreement with the NSDAP which was the basis for the outbreak of the second world war. Let me in general refer to the thesis of Justiarat Dr. Rudolf DILL. For my part, I wish to ask only this: Does the Prosecution really believe that this accusation is justified in view of the fact that in 1926 the German and French potash industries combined, that on 30 September 1926, under the presidency of Dr. h.c. MAXEISCH (Arbogt Luxembourg) the Internationale Rohstoff-Gesellschaft

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(International Raw Steel Association) came to being, and that in 1927 the chemical industries of Germany, France and England concluded similar agreements?

I shall now deal with the "conspiracy" aspect, insofar as it concerns my client Dr. GOTTHELM. It appears that the Prosecution itself lacked confidence when making the assertion that under the direction of Dr. Baech and Dr. Duisberg, almost cooperation was achieved between IG Farben and Hitler. Only thus can we explain the fact that they submit an, in itself irrelevant, document which is to show that Dr. Carl Duisberg supported the Winter Relief Fund. It is an old established fact: In the search for artificial arguments one frequently makes mistakes. In this case the presentation of the evidence showed that the Prosecution had made a little slip and mixed up names; Dr. Carl Duisberg was mistaken for Dr. Carl Duisberg. (Gettelson Exhibit 5, 38).

It is beyond doubt that the aim to shift Duisberg and Baech, in other words the IG leaders, into the political track of the NSDAP can never be attained. In his book: "Adolf Hitler, der Zerstörer der Verantwortungsgemeinschaft" (Adolf Hitler, Age of Responsibility?), published 1936 by Eugen Winkler in Berlin, Konrad Heiden says - I quote:

"Incidentally, the three big industrialists, who can claim the most solid and mighty accomplishments during the past war years, namely Carl Duisberg and Carl Baech of the IG Farbenindustrie and Carl Friedrich von Siemens, chief of the concern of the same name, did not support Hitler, but opposed him". End of quotation.

In his direct examination Dr. Gettelson drew the full and true picture of

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Duisberg - I quote: "As early as 1931 he proposed in a great speech to tackle the problem of European economic cooperation from the practical side and to prepare for a European customs union by working first of all for an understanding in Central and Southeast Europe, and then for an economic understanding with France and the West European countries." End of quotation.

It stands to reason that this man, who advocated economic ideas of this kind, should adhere to a policy of arbitration and understanding with France. It is also clear that politically he had to be an opponent of Kirdorf, Hugenberg, and Thyssen. His rejection of the Harburg Front, formed with the effective support of Hugenberg and Schrodt, and which is an important milestone along the road to Hitler's access to power, is not surprising. Duisberg's course remained clear and constant. The man, who, in June 1927, is one of the most notable figures in the negotiations attended by the British Minister of Transport, Ashley, and leading representatives of British industry, is unable, from the start, to see in Hitler a statesman fit to steer the fate of the Reich. Thus he writes as follows to Dr. Schmidt-Pauli, who in 1931 tried to interest him in the Party - I quote:

"You will learn from personal experience what it means if ever this party should come to power". End of quotation.

In an affidavit, (Gottinoru - Exhibit No. 10), Dr. Kalla describes Busch as the venerated spiritual leader, and the pride of, the IG. This again invites the question: What was the attitude of this man, who was the IG leader until 1940, toward foreign politics and Hitler? The said affidavit discloses that Busch was greatly interested in a German-French

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understanding, advanced the foreign political cooperation of Stresemann-Briand and supported Count Coudenhove-Kalergi's Pan-European movement, which was rejected by the NSDAP, but which still plays a part in the efforts to attain European union. We read with profound emotion the affidavit of the former president of the German peace delegation to Versailles, Freiherr Dr. Kurt von Lersner, who often met Geheimrat Bosch between 1929 and the fall of 1939. Freiherr von Lersner writes - I quote:

"His love for peace - I could almost say his 'peace-obsession' - ran like a red thread through all our personal and political discussions. We both realized clearly that an honest Franco-German agreement was the safest guarantee for peace. That is why he cooperated untiringly in all Franco-German dealings, the purpose and aim of which was Franco-German unity. Carl Bosch's attitude toward Hitler and the National Socialist Party can perhaps be best recognized through the shattering criticism which he related to me after his first meeting with Hitler: "This man Hitler is a thing, absolutely nothing. It's all a pure fraud." In the course of the following years Carl Bosch repeatedly told me: "Hitler will ruin us all. I hope that at least he's not as stupid as to start a war. One would think that a man who went through the world war as a corporal, would at least refrain from bringing renewed misery and horror of that nature into the world; The persecution of the Jews is an outrage and a disgrace which will revenge itself bitterly." Peace, peace and once more peace is the alpha and omega for us and for the whole world." End of quotation.

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It is inconceivable how the Prosecution could have thought of the conspiracy idea. Along the personalities of Bosch and Duisberg, who guided the fate of IG beyond 1933, should have made them think. Every reasonable economist considers peace as the prerequisite for prosperity. This conclusion the Prosecution would likewise have reached if they had considered the problem from that angle. Paul G. Hoffman rightly says in November of last year, i.e. 5 months before he was appointed administrator of the ERO: (I quote):

"Wars and international conflicts may result in feverish business or even apparent prosperity, but true wealth, enjoyed by the whole nation, can only be gained through peaceful development and international cooperation. For this reason we are convinced that the preservation of peace and the development of international trade are the sole decisive factors for achieving true prosperity and a higher living standard for all." End of quotation.

Under these circumstances, and even quite apart from Gottineau's political convictions, there was no room left for him to have acted as intermediary in a conspiracy between IG and Hitler. It is absurd to assume that he could have done this in the lifetime of two such prominent economic leaders as Carl Duisberg and Carl Bosch.

Who was Dr. Gottineau?

1928: Scientific assistant in the secretariat of Geheimrat Duisberg in Leverkusen. From 7 September 1932 chief of the political economy department, consisting of press department, trade political bureau Berlin, and the so-called commercial economy center in Frankfurt. In his affidavit, (Gottineau Exhibit No. 2), University professor Dr. Kohnen, after 1945 Minister of Education in Northern Rhine-Westphalia, says about Dr. Gottineau's attitude in the years prior to 1933 - I quote:

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"Especially during the years that I was twice Dean of Bonn University, I had to do a great deal with Dr. Gattineau as deputy of Privy Councillor Deisberg. I know from hearsay that in his student days he had for a time belonged to a Free Corps, but he was certainly not the type of the "Freikorpsschmied" ("Free Corps fighter"). On the contrary, he always impressed me as an open-minded person, mature beyond his years and moderate in his political utterances, and at any rate during the years that I knew him he warmly and from innermost conviction supported his chief's views and political opinions. Our talks never gave me the impression that the former Free Corps fighter had become a Nazi or even a war politician". End of quotation.

Gattineau Exhibit P. 33 reveals that Dr. Gattineau was a member of the conservative Volkspartei (Peoples Party) until it was dissolved, and when he stood for the Reichstag for the Düsseldorf division in 1932, this led to grave conflicts with the NSDAP.

This man is considered by the Prosecution to be a man with political connections. How little there is to these assertions was shown during the presentation of the evidence. The defendant's circle of acquaintances among the so-called National Socialist hierarchy is insignificant and foreign to him.

He is personally acquainted with Professor Haushofer, who read geography at the Ludwig University in Munich - Gattineau attended Professor Haushofer's lectures; he knows Hinkel, later Reich Culture Trustee, from the Oberland League, and Hilger from his student days. That is all up to 1933. It seems that the Prosecution regards the Oberland League as a kind of predecessor of the NSDAP.

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The inaccuracy of this assumption may be seen from Dr. Friedrich GATTINEAU's affidavit (Gattineau exh. No. 31). The Oberland League was a product of the post-war period. During the period of the inflation and after the Upper-Silesian Free Corps struggle, one of its most important, specially emphasized aims was the maintenance of Reich unity and the strengthening of nationalist thought. Hence the fight against all separatist aims from within and all attempts from without to detach territory from the Reich. On the other hand the league took up a firm line against Communist attempts to overthrow the government right from the beginning. The independence of the Oberland League from other parties, the fact that Free-Masons and half-Jews were members and even occupied leading positions soon lead to friction with the NSDAP, which, in 1928, forbade its members to belong to the Oberland-League. After this time the attacks of the National Socialist press against the league increased. In May 1933 it was dissolved and suppressed by the National Socialist government.

After 1933 GATTINEAU is appointed honorary SA officer by SA SA, without being a Party member. He meets ROSEN three times and discusses with him the economic possibilities of an understanding with France, the necessity of an understanding between employers and workers and SCHUBERT. Dr. GATTINEAU never held office in the SA. Apart from ROSEN he also got to know the following SA leaders between 1933 and 1934: SCHUBERT, Ritter von KRAUSER, SCHNEIDER, von LITEN, BERGMANN, LEINER and ERNST. Of all these leaders, only SCHUBERT, LEINER and BERGMANN survived 30 June 1934. All the others were shot.

The political attitude of Dr. GATTINEAU was demonstrated by a number of affidavits. Professor Arthur BRANT of Toronto university describes the defendant as a liberal person in whose house free discussions were held.

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He points out that no discrimination was made against Jews who were members of the sports club run by Dr. GATTINEAU (Gattineau Exhibit No. 44).

The affiant Inspector KUENKE who was the defendant's secretary from 1 January 1933 to 31 December 1935, attests to the fact that people holding a different political opinion were not only employed but even hired by his department. (Gattineau Exh. No. 53.)

Liselotte von ZUKOWSKI emphasizes that Dr. GATTINEAU rarely wore SA uniform from November 1933 to 30 June 1934 (Gattineau exh. No. 73). Hans SCHAEFFEN who was together with GATTINEAU nearly every day, sums up his political attitude in one clear sentence, he, SCHAEFFEN, was always under the impression that Dr. GATTINEAU rejected HITLER's methods for reasons of political and economic common sense, as well as for moral reasons. The affiant continues, I quote:

"The matter did not end with Dr. GATTINEAU's opposing attitude alone. As far as he himself was able to take decisions, he surrounded himself as chief of the economical-political department of the IG with co-workers, who were anything but followers of the National Socialistic regime. He kept me for instance as his secretary even after the seizure of power, although he knew that I was a radical opponent of the National Socialism, and was in contact with the German resistance movement. He gave aid to members of the German resistance movement as far as was in his power to do so, and under considerable risk to himself. As examples I quote:

a) the case GUELGE. Dr. Maximilian GUELGE, member of the state legislature for the German Center Party and Oberregierungsrat (higher governmental counsellor) in the Prussian Ministry of Agriculture, had been dismissed from his office in 1933 because of "political unreliability". GATTINEAU used all his influence to the effect that Dr. GUELGE was permitted to work in the economical-political department of the IG.

I know that Dr. BURLAGE, who at that time experienced financial difficulties, received financial aid at the instigation of Dr. GATTINEAU.

b) the case of Peter SCHAEVEN. When Peter SCHAEVEN, the secretary general of the Center party in Cologne (at present secretary general of the CDU, chairman of the Municipal Council of Cologne and member of the District Legislature), lost his position as a result of the dissolution of the Center party in 1933, Dr. GATTINEAU, on his own initiative, furnished considerable sums of money, which enabled Peter SCHAEVEN to keep going and to aid him and his family over the time of his unemployment and political persecution.

c) Support of non-Aryan journalists. In his capacity as chief of the press office of the IG Dr. GATTINEAU gave, as far as I remember, material aid to Jewish journalists during the first period after the seizure of power, by giving them the opportunity to assist anonymously in the work which had to be done by the press office.² End of quotation. (Gottschau Exh. No. 12.)

In view of such an attitude it is not surprising that Dr. GATTINEAU supported the Elsa BLUMENFELD endowment and became a member of a circle hostile to the NSDAP, the ROEMER circle. During the whole National Socialist period this circle was regarded as an outspokenly liberal club where one could criticize National Socialism. Nearly all the people going there were confirmed opponents of National Socialism; for instance, Dr. HUGENBERG and Dr. MAX HUBER, as well as Major MOCH, an officer of the GERMANY department who was under SS surveillance (compare GATTINEAU exh. No. 12.) Considering Dr. GATTINEAU's attitude and his actions, is it not surprising that the ROEMER affair alarmed him and he nearly suffered the fate of a JUNG who wrote the speech which REPPEN delivered at Marburg. In addition to that we must consider the testimony of the affiant Hans-Michael.

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RECHER, the chairman of the German student body before the seizure of power by the National Socialists (Gattineau exh. No. 34). I quote:

"These students who supported me, were opponents of National Socialism. Then, after local elections in the student's association, there was a National Socialist majority, I relinquished my post at the end of the old year 1931, and in open opposition to the Nazis ceased to interest myself in activities concerning problems of the student's association. I maintained the leadership of the group that had supported me and we formed an organization, the purpose of which was to act as an opposing force to the National Socialist German Student's Association. For the carrying out of these election fights and for means of supporting the organization, money was needed. I therefore contacted Heinrich DUISBERG and Dr. GATTINEAU and tried to obtain from them the necessary means for our activities. These were given to us willingly. It was clear that it was Dr. GATTINEAU in particular who tried to be of use in this connection. Through Dr. GATTINEAU I received until the middle of 1933 all the necessary means. Because of the impossibility of continuing our struggle I ceased in 1933 to approach Dr. GATTINEAU any further..". End of quotation.

It is surprising that in view of the political attitude of BOSCH, a DUISBERG, the prosecution presumes that Dr. GATTINEAU, whose attitude towards National Socialism must be described as hostile, arranged for a conference, at which he probably did not say anything at all - to bring about an alliance between the IG and the NSDAP. This presumption surprises every historian, all the more so, when one considers the NSDAP party program with its anti-trust and anti-cartel platform. Not without reason does Hans RECHER state the following in his affidavit (GATTINEAU Exh. No. 61), I quote:

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"Of a so-called 'alliance' of the IG with Hitler and with the NSDAP' respectively', I heard for the first time through the publication of the Nurnberg Indictment. Every National Socialist, before and after 1933, would have indignantly rejected such an allegation in those days." End of quotation.

What then, is the phantastic claim of the Prosecution based, which says, I quote:

"The IG reaped tremendous profits and advantages from the alliance which they concluded with HITLER in 1932 and which could be broken only by force of arms in 1943." End of quotation.

Dr. GATTISBAU stated in his direct examination, I quote:

"In the fall of 1932, Gerd von SCHUCH asked me to come to the Adlon Hotel. He was very excited about several newspaper attacks by the IG press against the German gasoline production. He said something along the lines that one would have to find out whether that was the opinion held by the Party. If one were to explain to them intelligently the economic significance of the synthetic gasoline production it should be possible to attain that they ceased their attacks." End of quotation.

GATTISBAU was the IG press chief. As heard at HAUSEPPE's that this man knew HESS. GATTISBAU contacted HAUSEPPE. This is how the conference was arranged. This is not the only one either and not limited to the NSDAP, as the Prosecution tries to make out. The affidavit by SCHUCH (GATTISBAU Exh. No. 185) shows that this visit to HITLER was undertaken in connection with a large campaign for enlightenment. During that same period of time the Leuna plant was inspected by industrial experts of various political parties, those of the left, including the Communist Party, to those of the extreme right.

That is the background of a conference where no discussion whatever was held about the gasoline tax grants.

nor any promises made of a financial or any other nature. That no agreements were made beforehand, may be seen from the fact that Dr. BUEHLER was only a Prokurist with the title of Director, Dr. GATTINEAU not even Prokurist.

How else was the IG to try and stop the irrational attacks in the powerful National Socialist press, attacks which were of a considerable severity as the following quotations show: article from the "Völkischer Beobachter", dated 13 February 1932, headed, "Doubtful Economic Drive - Interests of the Parties interested in Standard Motor Fuel".

"Generally speaking, we have the strongest objections against this motor fuel plan. The elimination of half of the German benzene production would be equivalent to a one-sided preference of the IG at the expense of the benzene producing industry and of all the consumers. In examining the whole plan one gains the impression that this is not in reality taken in the interest of the German political economy, but a profit-seeking plan of an influential group of people anxious to safeguard their own interest." End of quotation (Gattineau exh. No. 80).

Article from the "Völkischer Beobachter", dated 28 June 1932, headed, "Foreign Rule over the German Economy and its Dangers".

"The fact that a large proportion of the German economy is under foreign rule constitutes a mortal danger for our nation" ... "A state imposing its strong will also in economic policy and asserting it in the service of the people will ensure that the German will rid himself also from the foreign rule in the economy!" End of quotation (Gattineau exh. No. 88.)

Article from the "Völkischer Beobachter" dated 11 March 1932, headed, "IG Farben and Oppau".

"And what about the hydrogenation of coal, developed in Germany under immense sacrifices in money and human lives? No sooner had the process

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been developed than the patents could be sold to the Standard Oil.⁹ End of quotation (Gattineau exh. No. 64).

An article from "Der Fuehrer" - the crusading Badener paper for National Socialist policy and German culture - of 21 January 1932, under the heading: Fuel price scandal - Do Government and big capital work hand in hand? - Is German motoring to be strangled completely?

..... while the leading associations are carrying on a fight against the price-boosting policy of the fuel industries association, government and big capital are uniting for a new and crushing blow against German motoring..... The creation of a standard fuel means nothing more in the long run than the introduction of a monopoly in general ... " End of quotation (Gattineau -Exh. No. 136).

How fantastic the assertion of a union is, as made by the Prosecution, is shown by the fact that none of the representatives of the Reich Ministry of Economics who took part in the petroleum negotiations, or any other officials, were told that there were any promises or guarantees from Hitler or his Party to the IG concerning petrol hydrogenation, and that care should be taken in regard to this fact. The evidence has proved conclusively that petrol negotiations with the Reich Ministry of Economics started already at the beginning of 1932 (Cabinet BREUNING) and that from 1931 until 1933 no increase in petrol duty took place.

I refer in this connection to Gattineau exhibits Nos. 50, 51, 52, 53, 56 and 58.

That false conclusions might be produced by a Prosecution that does not start from facts but from a fantastic hypothesis, is shown by the following points of the Prosecution, namely that: The economic rise of the IG starting in 1932/33 proved its close relation to the E.O.P.

On other hand it is a clear fact, that the same rise also occurred in the British and American large-scale industry.

I am convinced, that history will subject the findings of the IMT-judgement to considerable correction and will place the events of the National Socialist period and those of the second world war in the right sequence. In spite of that I should like, for the purpose of argumentation, to take the IMT-judgement as basis regarding the question of aggressive warfare rather of common knowledge.

In the text book "Das Urteil von Nuernberg" (The Nuernberg Judgement) published by the Nymphenburger Verlagsbuchhandlung in 1946, it says in page 141 - I quote:

"The evidence does not show that he participated in any of the conferences at which Hitler outlined his aggressive intentions. Consequently the Tribunal takes the view that Frix was not a member of the common plan or conspiracy to wage aggressive war as defined in this Judgement." End of quotation. The four conferences were those of 5.11.1937, 23.5.1939, 23.8.1939 and 23.11.1939.

With reference to Frixen the judgement on page 172 of the same book reads - I quote:

"There is no evidence that he was a part to the plans under which the occupation of Austria was a step in the direction of further aggressive action, or even that he participated in plans to occupy Austria by aggressive war if necessary. But it is not established beyond a reasonable doubt that this was the purpose of his activity, and therefore,

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the Tribunal cannot hold that he was a party to the common plan charged in Count One or participated in the planning of the aggressive wars charged under Count Two."

In giving the reasons for Fritzsche's acquittal, it is stated on page 183 of the same volume - I quote:

"Never did he achieve sufficient stature to attend the planning conferences which led to aggressive war..... Nor is there any showing that he was informed of the decisions taken at these conferences. His activities cannot be said to be those which fall within the definition of the common plan to wage aggressive war." End of quotation.

From the reasons given in the case of Schacht, I quote from page 160/51 of the same volume:

"It is clear that Schacht was a central figure in Germany's rearmament program, and the steps which he took, particularly in the early days of the Nazi regime, were responsible for Nazi Germany's rapid rise as a military power. But rearmament of itself is not criminal under the Charter. To be a Crime against Peace under Article 6 of the Charter it must be shown that Schacht carried out this rearmament as part of the Nazi plans to wage aggressive wars....."

"The Tribunal has considered the whole of this evidence with great care, and comes to the conclusion that this necessary inference has not been established beyond a reasonable doubt." End of quotation.

The prosecution witness Paul Schmidt had to admit, that it is unlikely, for one of the defendants to have known more about Hitler's intentions to wage aggressive war than Schacht and Doenitz (page 1374/75 of the German transcript).

FINAL PLEA GATTINOSU

Does the Prosecution believe, that Dr. Gattinusu knew more than these persons, who were members of the political leadership of the Third Reich? Let us moreover consider the propaganda of the Third Reich, the so-called peace talks, as well as the declaration signed by Hitler and Chamberlain in Munich in 1938, then it will become clear, that Dr. Gattinusu was taken unawares by the foreign political events, which led to the war. Else he would not have come to Borkum in August 1939 to spend his vacations there.

Regarding the question of the Protectorate, the defendant Dr. Gattinusu testified in the witness-stand - I quote:

The theory was represented at the time that Czechoslovakia, in view of its friendly policy toward Russia, could become an aircraft carrier for Russia to enter the heart of Europe. When the agreements with Hacha were published, I considered that a protective measure against the East.⁹ End of quotation.

How well-founded Dr. Gattinusu's opinion was, can be seen from Exhibit No. 146, submitted by me, regarding the Bolshevization of Czechoslovakia in connection with the events of 1948. He could not have known, the manner and method, the "how" and Hitler's aims down to the smallest details. My client's surprise when hostilities against the Soviet-Union began, is shown in the Gattinusu-Exhibit No. 191. It becomes quite clear that the individual person, who was not a member of the closer circle of the political leaders of the Third Reich - could not have been informed about inner and foreign political measures, due to the secrecy regulations.

The Prosecution intended to prove participation in aggressive warfare, for instance through contributions, which were sent to the party and its branches, as well as through the activity in the Advertiser Council, in the circle of experts in the Propaganda Ministry, in the Wipo as well as in Austria or South East Europe.

FINAL PLEA GATTINEAU

There are three main points with which the prosecution charges the defendant with reference to the SA-complex after 1933: negotiating the purchase of a house under the Brown House scheme, his position as economic adviser to Roehm, procuring donations for the SA. However, I do not understand, what the Prosecution wishes to prove by this, as the SA was admitted by the International Military Tribunal. Nevertheless I should like to make the following remarks: Before the National Socialists rose to power, the IG, tried to support the groups which were against the National Socialists. It was a measure of self-defense, after the National Socialist revolution, not to exclude oneself from the collections of the NSDAP, which were made under the cloak of social welfare. The wild collection activity of the various organizations could only be halted by the payment of a fixed sum to the head offices of the organizations.

The so-called house purchase within the Brown House scheme turns out to be a completely harmless affair. The evidence has shown the following: Roehm had a private apartment in Munich in the Prinzregentenstrasse. The house next to it was to be sold. For reasons of security, Roehm considered it important to rent this house. SA-Gruppenfuehrer Schreyer, Roehm's expert in questions of administration and finance therefore suggested, that the IG should buy the house and should put it at the disposal of the main SA-Administration on lease. This was done through the Bagger-AG., which took over the house again after 30 June 1934 (Gottineau Exhibit No. 39). This affair had nothing to do with the Brown House. It has been proved by Gottineau - Exhibit No. 41, that my client never held the office of an economic adviser to Roehm and was never considered as such by any department.

Through the submission of the documents - Gottineau-Edh. 42 and 43 - it becomes evident, that the SA-complex did not follow the policy which led to the war and that the supreme SA-leadership headed by Roehm was in opposition to the policy of Hitler and the Party.

FINAL PLAZA GATTINOSCHI

Gattinoschi-Exh. No. 43 reads - I quote:

"Roehm followed a policy of conciliation with the Western Powers. The establishment of a militia, which he envisaged, was to be carried out after a prior agreement with the Western Powers. Parallel to the 100 000 man Army, this militia was to be created on the Swiss pattern in order to strengthen the defensive force of the Reich against the danger which threatened from the East... In contrast to other agencies of the Party, Roehm advocated the cooperation of the trade unions in the economic and social-political life within Germany. He adopted a liberal attitude in the church question. In consequence of this attitude of Roehm, a pronounced estrangement took place between him and Hitler and influential Party agencies..." End of quotation.

Gattinoschi-Exhibit No. 43 reads - and I quote:

"After 30 January 1933 a tension developed in the relations between Goering and Roehm. I learned about this in an SA Leader meeting at Koenigsstein..... Roehm, among other things, said the following: He would bring his influence to bear in favor of an understanding with all neighboring states. The SA was not in the first place, to be regarded as an instrument of power, its task was rather to justify the confidence it had gained in the internal political struggle. It would betray a weakness, after having obtained power in the state, to believe that Germans could be governed by rubber-truncheons.... He (Roehm) would never lend his hand to support the hunger for power of certain individuals. Thereby one would imperil the peace of Europe, the new state could not afford to indulge in experiments which would conjure up a new war Roehm openly opposed the alliance with Italian fascism and said: For Germany, the only thing is the orientation towards the West. He stated that, unfortunately, Goebbels, too, had gone over to the other side....." End of quotation.

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Thus it is established, that the financial support, seen objectively, could not have served the purpose, as assumed by the prosecution.

These divergencies, which developed within the NSDAP in the course of time, explain, why - as can be seen from Gattineau-Exhibit No. 40 -

Dr. Gattineau was reproached, after 30 June 1934 - with having financed the revolt against Hitler with IG funds. It is amusing, that the Prosecution should interpret this as lending financial aid to Hitler. Incidentally I should just like to point out, that already prior to 30 June 1934 the party had tried several times to attack Dr. Gattineau for political reasons. Gattineau-Exhibit No. 40 shows, that the SS-Leader and referent in the Propaganda Ministry, Bogg, accused Dr. Gattineau, of having, among other things, used his position in the IG in order to sabotage Goering's attempts to collect funds in Sweden for the NSDAP.

The 30 June 1934 represents an important date in the life of the defendant Dr. Gattineau. It was only by chance that he escaped from death. In these circumstances he ruthlessly drew the consequences and refrained from taking part in any political affairs. He resigned from the SA. He tried to shield himself from the NSDAP by becoming a party member in 1935 and endeavoured to get abroad, where he thought he would be safe.

In their effort to substantiate artificially the assertion that the defendants had supported Hitler, although knowing his aggressive intentions, the Prosecution has produced all sorts of evidence. That is the reason why membership of the circle of experts and advertising council was listed as incriminating evidence. It always happens that if one searches for reasons, one often arrives at faulty conclusions. This happened to the Prosecution regarding the advertising council and the circle of experts.

The documents: Gattineau-Exhibit No. 18 and 19 prove the contrary of the assertion by the Prosecution and show, that neither of the two institutions was a propaganda organisation of the Third Reich.

FINAL FLEA GATTINER

Persons of international repute, such as Generaldirektor DIERS, Otto Christian FISCHER etc. belonged to the experts council of the Propaganda Ministry. It was proved, that it did not come either to an actual assignment of tasks ^{or} to a confidential collaboration with the Propaganda Ministry. Dr. Goebbels soon had enough of the attempts of these gentlemen to find out the effects abroad of the measures taken by the Third Reich, and to point out the negative effects of the radical measures of the National Socialist Government. In 1934 the activity of this circle was stopped. Erwin Finkenzeller, the manager of the Advertising Council, writes in the "Völkischer Beobachter" on 2.11.1933 with regard to the Advertising Council. (Gattinow-Exhibit No. 22) I quote:

"The main task of the Advertising Council is to further advertising in any conceivable manner and to point out to the German people as a whole the value and necessity of economic propaganda..... No new announcement of the Advertising Council will ever prevent advertising but always promote it. Every new announcement of the Advertising Council will hurt only those who believe that they may operate within this important economic branch with unfair methods or any methods detrimental to political economy." End of quotation.

These excerpts may suffice to show the significance of the Advertising Council.

The defense submitted the minutes of the session of the working committee held on 7.9.1932 which read - I quote:

"The Z.A. (Central Committee) furthermore decided upon the formation of an economic-political department, under the management of Dr. Gattinow, which comprises the press agency, the economic-political bureau and the trade-political bureau." End of quotation.

FINAL PLEA CONTINUED

In order to be able to state its case, the Prosecution submits that the founding of the Lipo was connected with the National Socialist seizure of power. This has been contradicted by the submission of the quoted extract from the Proceedings. Thus there can be no doubt that Gettinow's statement is correct, when he says in his direct cross-examination - I quote:

".....I saw Farben people from various Farben offices running around in Berlin to settle some matter with the various government authorities. I saw learned that it often happened that two or more departments of the Berlin authorities took up different attitudes in the same matter." End of quotation.

Thus it was the purpose of the Lipo, as shown by the Prosecution - Exhibit 891, D. K. 46, English page 794 - I quote:

".....to keep up the increasingly important contact with official and semi-official offices and to keep in contact with the authorities and prepare the way for Farben's wishes so that they can be submitted to the authorities for decision." End of quotation.

It is, however, a wrong assumption, as is shown by the statement of the Prosecution witness Dr. KREMER, to deduce from the above that the Lipo was competent for all contact with the authorities. Technical matters remained in the hands of Vermittlungsstelle W, which was also competent for contact with the authorities of the Four Year Plan and the military authorities. There was no cooperation between this office and the Lipo. The Central Finance Department was in contact with the Reichsbank, the Reich Ministry of Finance, the Foreign Currency Offices and the Banking Department of the Reich Ministry of Economy. The Legal Department had to deal with the Patent Office, the Social Department with the Ministry of Labor and the Labor Offices.

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It is also wrong to assume that the Wip was the Liaison Office for the Party Organizations. It was altogether impossible to centralize the contact with Party Offices, since the Party organization was established on regional lines. The factories and plant communities were therefore forced to settle their affairs with the Party offices locally. A memorandum GATTINEAU was competent for contact with the Auslandsorganisation, as is expressly shown by the resolution of the Commercial Committee dated 20 January 1936. (Cp. GATTINEAU Exhibit Nos. 65 and 67). Thus the sphere of activity of the Wip, as can be seen from the most varied statements by witnesses, remained the contact with the Ministry of Economics.

The Prosecution tried to over-emphasize the importance of the Wip in order to hide the fact that in reality Wip was one of the smallest departments of NSDAP. In 1932 it had 8 qualified officials, in 1936 there were twelve. Furthermore, in 1935 the press department was separated from the Wip. How little the National Socialist seizure of power had to do with the Wip can be seen from the fact that in 1933 expenditure for this department decreased, while later in consequence of the increase in the number of government officials it rose slowly (Cp. GATTINEAU - Exhibit N. 66). Nor does the importance of the Political Economic Department increase if the Prosecution submits that GATTINEAU participated for some time in the meetings of the Working Committee. For it is a fact that he was present at these meetings as a guest, and not as director of the Wip, but in his capacity as director of the Press Department until 25 April 1935 (Cp. GATTINEAU - Exhibit N. 74) whereas he was director of the Wip until the end of 1936.

Propaganda, espionage, and cooperation in a billiard game are points which the Prosecution links up with the Wip.

One fact above all seems to be important to the

Prosecution. The Brazilian Broadcasting Corporation asked for material against the Communist International. This request was forwarded to the Vice for submission to the competent authorities, a request by an official Brazilian authority. I do not understand why this should be punishable. Therefore, especially in view of the knowledge based on present events and in view of the fact that political circles within the United States are now contemplating the formation of an anti-Communist ministry, Dr. GATTHERU's ironical answer to Mr. SPRECHER becomes clear in this connection - I quote:

"Ah, you are referring to the alleged war crime of anti-Communist propaganda." End of quotation.

It is a fact, however, that the IG. did not make any propaganda; it only forwarded a request which it had received. Nor does any other document submitted by the Prosecution show that any propaganda was made on behalf of the NSDAP (Nazi Party). All documents of the Prosecution have, by the way, been discussed in direct cross-examination in such detail that I can spare myself the trouble of going through them once more. Dr. Felix EISENBERG, in his affidavit (GATTHERU - Exhibit No. 76) is therefore right in saying - I quote: "I have no reason to believe that the IG. was engaged in espionage and political propaganda." End of quotation.

Nor was there anything left of the accusation of espionage. Herr BLOCH, who has been quoted by the Prosecution, was well-acquainted with Herr GATTHERU, and was an enemy of National Socialism from the Canaris-group. Together with my client he frequented the liberal Hermann circle. What he received were interesting newspaper articles now and then, but no espionage material. The witness RUFFINI, who was a captain in counter-intelligence, states with reference to the whole problem -

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I quote: "None of the gentlemen succeeded in inducing the IG to cooperate in the economic intelligence service, as it was generally the understandable tendency of the big concerns working abroad to avoid any connection with the intelligence service on account of its compromising character." End of quotation.

This is also stated in GATTHERAU - Exhibit M., 76, where it says - I quote: "No activity in behalf of counter-intelligence for export reasons". End of quotation.

The next point in dispute is the M-question. The Prosecution regards this as measures for mobilization. Even witnesses for the Prosecution state that the meaning was the status of indispensability (UN-Stellung). I refer to Dr. KRUEGER, FRANK-WAHLE and Gustav KUEPPER. The latter states - I quote:

"At all these meetings when the 'M' question was discussed it was always the aim that as much personnel as possible was to be retained for Farben and was to be kept out of the Wehrmacht. That applied particularly to dyestuffs and the sale of dyestuffs, because, in itself, this was not war-essential and was therefore particularly endangered by recruitment for the Armed Forces." End of quotation.

Thus there can be no doubt that the M-question is the last consequence of the introduction of universal conscription, in order to keep up the commercial institutions in spite of the calling up for manoeuvres and also in case of mobilization, and not a code name for mobilization plans.

It is equally impossible to establish a connection between export promotion and the NS policy of force. Export promotion was necessary for general economic reasons, as a result of the same situation in raw materials and food, leading American and German authorities are today faced with the same problem. In order to clarify this point I try to mention that export promotion was in the hands of the Export Promotion Department.

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Regarding the Austrian question the Court has already ruled a precedent. The count "plunder and spoliation" has been cancelled. Enough evidence has been submitted to show that no exception could be taken to the business transactions. The whole question must therefore be regarded only from the point of view of deliberate assistance in an aggressive war. The purchase of I.G.'s shares with Skoda-Wetzlar and the Carbidwerk Deutsch-Wetzlar has already been discussed, so that I need not repeat it. It has become sufficiently clear that the Carbidwerk Deutsch-Wetzlar was in close connection with the IG. for 15 years and that years before the Anschluss (union of Austria with Germany) there had been negotiations concerning the Skoda-Wetzlar complex; as early as 1936 the Creditanstalt was prepared to sell to the IG. their entire stock of Skoda-Wetzlar shares.

In order to avoid misunderstanding, I must mention that the full name of the firm of Skoda-Wetzlar is "Pulverfabrik Skoda-Wetzlar A.G." as the firm produced powder during the first world war. After the first world war the installations were destroyed and during the time in question no more powder was produced. Only the name remained.

Before the Anschluss, during the Anschluss and for weeks after the Anschluss Dr. GATTINEAU was travelling in Africa, so that he could not have been present at the negotiations concerning the sale of Skoda-Wetzlar at that time. In May 1938, i.e. 2 months after the Anschluss, he was sent to Austria in order to assist Dr. ILGER. It was ILGER's task to arrange for those commissioners to be recalled who had been installed by the new Government for controlling the I.G. plants. Dr. GATTINEAU was to assist him because he knew Dr. BILGERI, Stabsleiter for the competent national commissioner.

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for private enterprises from his student days. Stabilitat in this connection means the leader of the office staff. The result was that the commissioners were recalled.

In the following period, Dr. GATTINEAU was ordered to assist Dr. FISCHER, commissioner of the IG for Austria, in his negotiations and his measures for the organization of Donauchemie. However, until 1941 Dr. GATTINEAU did not belong to any subsidiary of the IG in Austria. From 1 January 1939 onwards, he was acting director of the IG Dynamit Nobel Pressburg and had his office in Pressburg. It is therefore obvious that at that time he could no longer deal with Austrian questions as he was fully occupied with the organization of the Pressburg plants. It was only in 1941 that he became involved in them again when he was appointed a member of the Vorstand of Donauchemie. It is therefore understandable that Dr. GATTINEAU, when being cross-examined, could not remember the Dr. BILCHER affair, Doc. No. NI-14504, exh. No. 2127 and NI-14506, exh. No. 2136, which occurred in March 1939. If Dr. BILCHER did not make a mistake in the name - for BILCHER wrote to KUTNER about things of which he obviously knew only by hearsay - then this correspondence proves the contrary of the Prosecution's assumption. The IG had no few obligations towards Dr. BILCHER that they could reject his request for inclusion in the Vorstand of Donauchemie (Prosecution Doc. No. NI-14506, exh. No. 2136).

In his capacity as a member of the Vorstand, Dr. GATTINEAU had to take care of the commercial and financial affairs of Donauchemie from 1941 onwards, and besides his activity in Pressburg was director of the administration in Vienna. Dr. HENNING was manager of the plant Moosbierbaum, Dr. RACKHOFFER manager of the smaller plants of Donauchemie. The chairman of the Vorstand was Dr. STERNER.

From 1939 onwards the industrial interests of the IG in

Austria were concentrated into Donauchemie. Production served the needs of the Austrian economy and had nothing to do with either armament production or with the Four Year Plan, as was stated by the witnesses Ing. PLATZER, a former director of the Carbide works Deutsch-Antrieb, and Dr. SACKEFELDER, a former member of the Vorstand of Donauchemie, both gentlemen being Austrians. PLATZER said - I quote:

"I know nothing about the manufacture of armaments products in any of the Donauchemie plants." End of quotation.

Dr. SACKEFELDER said - I quote:

"The Vorstand of the Donauchemie, of which I was a member since the formation of this company in 1939, undertook the development of the plants with the aid of the IG, with the aim of increasing the yield of the plants by expanding them, above all of meeting the increased civilian Austrian requirements." End of quotation.

And at another point I quote: "Thus it cannot be said that the Donauchemie was purchased to the war-economy of the Reich." End of quotation. With regard to the question of Donauchemie and the Four Year Plan, the witness stated - I quote: "The plans for development were drawn up completely

independently of the Four Year Plan, the achievement of which was not taken into consideration either in founding or in planning the expansion of Donauchemie." End of quotation.

Neither my client nor the Donauchemie had anything to do with the factories of the IG established in Austria for the dehydration of petroleum and for the production of acetylene. The factories belonged to the IG and were managed by the competent Technical Offices. As Dr. GUSTAFSCH and Dr. BRAGIS have unanimously stated as witnesses, there were no plans for these factories in 1938/39 when Donauchemie was founded. They were erected by governmental order only 2 years after the outbreak of war.

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To the East of Vienna, hardly an hour's distance in a car, lies an old town - Bratislava (Pressburg). Bratislava, so far as the Prosecution is concerned, signifies AG Dynamite Nobel, apparently one of DE's most important factories for explosives in the occupied territory. The Indictment claims that Dr. GATTINEAU there shared in the procurement and ill-usage of foreign workers and in spoliation. So far as the Prosecution is concerned, Bratislava forms the central point of the plans for the inclusion of the South-East in the German armament machine.

For none of their accusations has the prosecution been able to produce evidence. In spite of this, the defense has proved

- a) that no spoliation took place in Bratislava
- b) that no armament production was carried out,
- c) that the opening-up of the South-East was not directed by the via for-war-production,
- d) that no compulsory workers were employed in Bratislava.

The very basis of the Indictment is incorrect. Slovakia was not occupied territory but represented a sovereign state acknowledged by the Vatican, by neutral states and partly also by former allies. GATTINEAU there took over a neglected plant. He there handed back to the new Czechoslovakian state a model factory. In Bratislava, during Dr. GATTINEAU's period of activity, a comprehensive reorganization of the entire works was undertaken. New factories were built, road- and traffic-conditions were modernized and other important investments made. The Defense has submitted GATTINEAU Exhibits No. 113, 114 and 115, from which the story of AG Dynamit Nobel/Pressburg may be deduced. It is obvious that, far from spoliation, important investments were made in connection with the works. In reviewing this defense-material, which was accepted by the Prosecution without objection, one cannot help being surprised at the nerve of

the Prosecution in making such statements.

What happened in Bratislava? A factory for mining explosives was built there, because the Slovaks themselves had need of mining explosives in their pits and for their road-constructions. There was, in addition, a possibility of exporting mining-explosives to the South East, above all to Yugoslavia and Greece. Furthermore the construction of a factory for staple fibre with an annual output of 7 - 8 million kg was carried out. The Slovaks had all the raw materials in their own country. The Prager Verein produced caustic soda and cellulose, also mining coal at Handlowa in Slovakia. Sulphuric acid and carbon disulphide came from the Dynamit Nobel at Bratislava. The factory, which was erected, was among the most modern of its kind in Europe and in a position to supply the entire Slovakian requirements. On this account the Slovakian textile industry could work 100 % until 1943 - i.e. as long as the Viatra factory continued to produce. There was even a surplus-production, which was sent to Switzerland and Hungary. The Slovak economy thereby obtained foreign currencies. Furthermore, a sulphuric^{acid} plant was built, the greater part of the sulphuric acid was sold in the country itself, excess-production also being exported. The carbon disulphide factory was enlarged. Carbon disulphide was needed for the manufacture of cellulose. I need not allude to smaller projects which arose, for it must be obvious that Bratislava was an armament plant. To AG Dynamit Nobel Fressburg belonged a number of various affiliated companies in the South East. These participating firms produced entirely for their own home industry, nothing for the Axis. And the new projects which were realized in the South East were purely peace-time productions. I will quote three: one project is the construction of a manure-nitrogen factory for lime ammonium nitrate in Roumania within the scope of a company AZOT with Roumanian majority holdings.

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This factory was to supply nitrogen to Roumanian agriculture. For Hungary a grease-factory was planned to supply raw soap products to the Hungarian soap-industry. In Yugoslavia a rayon-factory was projected on the basis of Yugoslav cellulose and caustic soda.

The industrialization of the South East was carried out from Bratislava with a view not only to the *do, ut des*, (give and you will be given), but even more so from the angle of *do, ut vivas* (give and you will live).

The prosecution has not submitted one single document proving that foreign or compulsory workers or Poles were employed in Bratislava. Defense-affidavits demonstrate the defendant Dr. GATTISBAU's exemplary, public-spirited activity. A number of declarations on oath also confirm this. I mention Gattisbau-exhibit No. 116. In this declaration Dr. Eugen PISOVA states the following, on oath - I quote:

"In every kind of position we employed primarily indigenous personnel of German, Slovak and Hungarian nationality. The factory workers were exclusively indigenous labor. We never employed foreign workers or prisoners of war." End of quotation. During agreements in Bratislava were concluded on a voluntary basis. It is natural that in view of the existing social program and the worker's wage-policy, application of workers were in excess of the plant's requirements. The witness quoted above continues in his affidavit - I quote:

"Jointly with Dynavit Sobel we carried out a comprehensive social program in Pressburg, consisting of the erection of new houses, recreation grounds, sports grounds, welfare offices, central messing facilities and supplementary food issues, as well as medical care through a special ambulance unit. As regards wage policy, we

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afforded our employees additional income in the form of efficiency and long service bonuses over and beyond the provisions of bare tariff regulations. All social institutions could be used by every employee irrespective of nationality." End of quotations.

The affiants, r. MEYER, Dr. Rudolf SCHULT and KOSPIE also confirm in their affidavits that neither Jews, nor foreign workers, nor detainees were employed at the plant Pressburg.

Robert SEHL, in Gattineau Exhibit No. 122 gives a complete character sketch and an account of Dr. GATTINEAU's attitude. I may therefore quote from this affidavit :-

"Dr. GATTINEAU was esteemed and - if I may use the expression - worshipped by all the personnel, irrespective of nationality and religion. There were sufficient reasons for it As former Chief of Personnel I do not remember a single case, when Dr. GATTINEAU did not help ... Towards Jews, Dr. GATTINEAU behaved more than correctly." End of quotation.

The affiant gives a number of examples to show how concerned Dr. GATTINEAU was for their food.

This alone must serve as an explanation why Dr. GATTINEAU's work-masters have come to his assistance in this trial by giving a number of joint declarations on behalf of their former chief.

David J. LALLIE and Boris I. NICOLAIEVSKY, whose work on the system of labor camps in Soviet Russia was published by the publishing firm of the "Neue Zeitung", that is to say, it was sponsored by the official organ of the American Army in Siberia, write in their foreword on page 3 - I quote :-

"The average citizen in Russia knows little enough of these labor-camps. He knows minor facts only concerning his own life -

poor trifles which never admit of conclusions as to the whole and much less a competent judgment. And how could he Newspaper and radio produces masterpieces of 'camouflage'." End of quotation.

This applies to present day knowledge in Soviet Russia. That the German people were kept in ignorance of conditions in the concentration camps and labor-camps is even today refuted in some quarters, and above all by the prosecution in the IG Farben Trial.

The present Suffragan Bishop of Munich, surely a reliable witness, writes in his work "Kreuz und Hakenkreuz" (Cross and Swastika) - I quote:

"Did a large fraction reach the public of the ghastly horrors in concentration camps, of the misery of deported compulsory workers? In the following chapters we shall see, so courageously and resolutely popes, bishops and priests protested against each horror of which they learnt That suggests, from the beginning, that they did not protest against the horrors mentioned above as yet because they were ignorant of them. And just as great or even more so was the ignorance of other people with regard to these misdeeds. This can be researched and proved in greater detail:

For eight years I have collected all that could be gathered on National Socialist lies ... news on acts of injustice, atrocities ... and so on. Hundreds of pages of the book mentioned above, published in 1940, "The Prosecution of the Catholic Church" originate from my collection. This may prove by confirmation all the more conclusively: Next to nothing could I learn and base on regarding concentration camp atrocities

Little enough was made public even by the so-called labor-kommandos which, during the last years, were assigned to arduous works in increasing numbers and who frequently came in contact with civilians: the detainees knew that they had to be very careful

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on account of 'spies' in every plant " End of quotation.

Does the Prosecution believe that Dr. GATTINEAU was in a position to learn more of this subject than the average German? The negligible extent of his knowledge in connection with the manner of allocating foreign labor is proved by the fact that after his flight from Bratislava he and his family lived in the so-called Steinlager (Stone Camp) at Ischler where, so he learnt subsequently, every luxury workers had also been quartered.

Dr. GATTINEAU did not belong to the Vorstand of IG nor to the Board of the concerns. It must be added to this that from the beginning of 1939 he no longer held any direct function in IG Farben. He was not present at any conference of works chiefs. Protocols of V& (Commercial Committee) prove that from 1937 to 1940 he was present as a guest during the whole or part of a meeting when concerns of his sphere of work were under discussion. At no meeting which he attended were political questions discussed, which might have given any enlightenment as to political aims.

In final conclusion of the evidence in the case GATTINEAU it has been shown clearly that the accusations by the prosecution are unfounded. The trial has demonstrated that, beyond any doubt, the defendant Dr. GATTINEAU is not guilty. In these circumstances there is only one thing left for me to do at the conclusion of this trial, and that is to move the motion: to acquit the defendant Dr. GATTINEAU.

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CERTIFICATE OF TRANSLATION

1 June 1948

We, the undersigned, hereby certify that we are duly appointed translators for the English and German languages and that the above is a true and correct translation of the Final Plea Gattineau.

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M.E. MASON
ETC No. 6176

" 6 - 9

AUDREY DOWDY
ETC No. 20116

" 10 - 18

ELLEN TRIMMETT
ETC No. 16673

" 19 - 25

PETER SIESEL
ETC No. 30254

" 26 - 32

ROBERT SCHLESINGER
ETC No. 20091

" 33 - 39

H.E. SUSMANN
ETC No. 20128

" END "

Finke Rein Hagerman (English)

Case 6
Defense

CLOSING STATEMENT

delivered by

DR. WOLFRAM VON METTLER
Defense Counsel

on behalf of

PAUL HAEFLIGER

Case 6:

"The United States of America
Against
Krauch and Others".

Long



May it please the Tribunal:

In addressing Your Honors on behalf of the defendant Paul Gaeffliger I do not propose to deal with all particulars of his case covered in my Closing Brief, but will confine myself to certain significant features, arising both from his personality and from the position which he occupied in I.G.Farben, including a particular feature of his case under Count I of the Indictment.

It is for the first time that a foreign national appears in the dock of one of the Nuremberg Tribunals and it is a tragic irony, that this man who is indicted for crimes against peace and humanity is a citizen of a country and even represented it for several years, after the Nazis came to power, as a consul, which for generations was regarded the incarnation of neutrality and love of peace and freedom. It is the same man, who in 1934 in a speech held by him as consul to the Swiss colony of Frankfurt, spoke the words which in a nutshell contain all those principles which decisively influenced his education and to which, according to his testimony, he never ceased to adhere, quote:

"I believe there is hardly a more peace-loving nation in the world than ours. There is hardly a nation, I am sure, more devoted to the system which aims at establishing law and rightful thinking in place of the sinister temptations of might and power than ours."

End quote.

And now the man, who spoke these words, has to defend himself against charges ranging from crimes against peace to crimes against humanity. The tragic irony of his

case is still more accentuated by the fact that after the collapse of Germany he was appointed official advisor of the Swiss Consulate at Frankfurt, and that after a comparatively short imprisonment by the American authorities he was definitely cleared and released in December 1945, and only in April 1947 was brought to Buerzburg as a witness for the Prosecution, whereupon in May 1947 he was again arrested and put on trial. This shows that the Prosecution apparently only in the last moment made up their mind to indict Paul Haefliger.

And there is another feature in his case which even more underlines the tragic irony which I just outlined to Your Honors. That is the fact that on the 2nd June 1947 he was informed by the Hessian State Ministry, that the law for emancipation from National Socialism and Militarism did not apply to him, which implies the confirmation that he is not to be regarded

as a follower of the Nazi ideology or the methods of their foreign policy. And it may be pointed out in this connection that Haefliger himself never was a member of the Nazi Party nor of any of its affiliations. He furthermore at no time held an official or semi-official position in the German Government or was a member of one of the sections of the Reich Association of German Industry ("Reichsverband der deutschen Industrie").

It is the position of Haefliger's Defense that, if one takes into consideration all these facts and then views the evidence produced by the Prosecution and by his Defense, one cannot but admit that the Prosecution has definitely failed to make out its case.

Under Count I of the Indictment Haefliger's name appears only in connection with the light-metal sector, the alleged stock-piling of Nickel and in connection with two insignificant incidents regarding political propaganda abroad, which were reported at sessions of the Commercial Committee at which Haefliger was present.

Under Count II Haefliger's name is mentioned -apart from the cases of Austria and Czechoslovakia, which are no more under consideration by this Tribunal- only in connection with the establishing of Nordisk Lettmotall in Norway and with a file note concerning one single insignificant discussion at the Reich Ministry of Economics concerning the trusteeship of Polish dyestuff plants.

Under Count III of the Indictment Haefliger's name is not brought in connection expressly with any specific crime.

Count IV does not at all concern Haefliger.

As for the rest, the Prosecution indict Haefliger on the ground of their general theory of the joint responsibility of all defendants as Vorstand-members, which is serving as a dragnet to draw in all defendants and which I have dealt with already in my previous statement.

In reviewing the evidence produced by the Prosecution in the case of Haefliger, one cannot but admit that this evidence is extremely poor and, as I respectfully submit, by far

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outweighed by the evidence offered by his Defense. Apparently the Prosecution were pinning their hopes chiefly on the cases of alleged spoliation in Austria and Czechoslovakia, in which they tried without success to allot to Haefliger a ^{influence} ~~role~~ which he never ^{exercised} ~~assumed~~. This however is not relevant anymore as these cases -as already mentioned- were eliminated from this trial by the ruling of this Tribunal.

To begin with the dragnet of the joint responsibility, I may refer to my previous statement, in which I took the liberty to set out the reasons why in our opinion this dragnet-theory is inconsistent with the actual facts and legally unsound. On the basis of the individual responsibility of the Vorstand-members for their special working-fields, the position of the Defense of Haefliger is, that his responsibility before the outbreak of the war was limited -apart from odd jobs in the light-metal field- in substance to the field of international cartel agreements for various heavy chemicals, on which he had specialised for long years even before I.G. Farben was established. This task absorbed the greater part of his working-capacity and kept him abroad for a considerable part of the year.

As for the rest, the evidence produced by the Defense has shown the peculiar position in which Haefliger was as a Vorstand-member and which can be summarised along the line that this position was not that of an ordinary Vorstand-member, and that therefore he had not the influence which the Prosecution tried to ascribe to him.

I would stress once more, that my client does not shun any responsibility for matters coming under his jurisdiction or his sphere of influence. But on the other hand, in the interest of his defense, he cannot be denied the right to adduce the actual facts surrounding his position in the Vorstand and putting his situation in the right light as it should be seen with the sober eye of a dispassionate observer. This realist manner of viewing the scope of personal responsibility is the only possible in a Court of Justice, as recognized for instance in the passage already quoted in my Opening Statement from the judgment of Tribunal II in Case 4 versus Pohl and Others (Transcript page 8079), to which reference is made once more.

If therefore my learned friend Mr. Sprecher, when he cross-examined the defendant Buergin on Haefliger's actual position in the Vorstand, ironically alluded to my client as "the orphan-child" of the Vorstand, I certainly do not take offence at this play upon words, because as a realist observer I cannot find that this joke got my learned friend any further. It did not change the actual facts, on which the defendant Buergin testified in his examination in chief and which he maintained also during his cross-examination, even when confronted with the "orphan-child aspect" by the Prosecution.

I would say therefore on the basis of the evidence introduced by the Defense on the actual position of Haefliger in the Vorstand -which by the way is confirmed by Prosecution Exhibit 2006, XI-444,- that all the observations made in my previous statement on the personal scope of business of an

I.G. Vorstand-member, on his duty not to keep a constant check on the activities of his colleagues, but to intervene only in cases of apparent grievances, particularly hold true with regard to my client, who before the war on account of his special working-field was frequently on extensive trips abroad, and after the war had no normal scope of business but was assigned from time to time to odd jobs, which again in different cases, as for instance Norway and Finland, caused him to go on trips abroad.

It is therefore the position of the Defense that on account of all these facts the defendant Haefliger cannot be made responsible under the dragnet-theory of the Prosecution ^{alleged} for any/activities of other defendants. The Prosecution has not offered any proof that the defendant Haefliger in any particular case was given a reasonable ground for suspicion, which ought to have caused him to interfere with any activity of his colleagues, and that he deliberately and wilfully has violated such obligation, quite apart from the necessity to establish the interdependency between omission and criminal effect dealt with in my previous statement.

As to the specific charges set forth against Haefliger under Count I of the Indictment, the stock-piling of Nickel and his other alleged activities in the light-metal sector have been shown by the Defense in their true significance, or better to say insignificance, in connection with the alleged participation in the preparation of an aggressive war. The same holds true with regard to the two incidents in connection with political propaganda abroad.

The Defense could have stopped at refuting the Prosecution's evidence, but in order to put Haefliger's personality in the right light, the Defense has introduced in its turn a considerable amount of evidence bearing out its position, that Haefliger never had any knowledge of Hitler's aggressive plans and did not participate in furthering them. This evidence has insofar in my humble opinion an especially strong probative value, as on the one hand it includes several affidavits of foreign affiants showing the attitude displayed by Haefliger on the occasion of international negotiations with foreign partners in his special working-field. On the other hand several documents show the fact, that I.G. up to the very beginning of the war and partly even thereafter granted to foreign partners valuable technical experiences and know-how -in several instances of strategic importance- and loyally discharged their contractual obligations helping their foreign business-partners in setting up new plants and modernizing older ones.

It is the position of the Defense -and insofar I am speaking again on behalf of all defendants- that the evidence to which I just referred is of particular importance in connection with the knowledge of Hitler's aggressive plans by the defendants alleged by the Prosecution. For this evidence shows beyond reasonable doubt, that no such knowledge could have existed on the part of the defendants. Otherwise most certainly they would never have behaved in the manner as shown by said evidence towards their foreign business-partners, who

were residents of future enemy countries.

Therefore -although the Defense maintain that the Prosecution's evidence under Count I of the indictment is irrelevant- I may be permitted to give a brief survey of the evidence relating to Farben's attitude in respect to the exchange of technical experiences with foreign business-partners, including also three significant pieces of evidence offered on this particular point by some other defendants.

In the first place I would refer to the evidence offered in this respect by the Defense of Paul Haefliger:

There is first of all the licensing and setting into operation of modern Magnesium plants by I.G. in England and France in the years 1934 up to 1936, described by Haefliger in his examination in chief (Transcript pages 9129 and 9130). The I.G. furnished their foreign partners with the latest technical experiences in this field. In consequence thereof England and France became independent as to the supply of Magnesium which they previously obtained partly from Germany.

In this connection reference is made to the Magnesium-policy of I.G. in U.S.A., described by Haefliger in his Affidavit Exhibit 29, Document No. 36, which always was directed towards introducing this new metal in U.S.A. on the broadest possible scale in spite of a dispiriting lack of interest on the part of the American industry for an extensive use of this new light-metal, until in 1937 I.G. had to relinquish its participation in the American Magnesium Corporation on account of the anti-German feelings displayed at that time in U.S.A., but continuing

nevertheless under new arrangements its efforts to develop a bigger market for this new metal.

Next comes the erection and setting into operation of a modern Nickel plant at Clydach in England for the Mond Nickel Company, London, in the years 1936 and 1939, which was completed only when the war broke out. This is an particularly striking example of the lack of knowledge of Hitler's aggressive plans on the part of the I.G. gentlemen, because I.G. sent one of their chemists, specialized in this field of production, only two weeks before the outbreak of the war to England, in order to set the new plant into operation. This chemist left England only in the last days of August 1939 upon the advice of the British gentlemen and not upon his own initiative or upon instruction by Farben. This again is highly significant and shows the complete lack of knowledge of Hitler's aggressive plans on the part of the I.G. Farben gentlemen. Reference is made to Haefliger Exhibit 30, Document No. 37.

Next comes the agreement closed between I.G. and Monsanto Chemical Company of St. Louis, Missouri, in 1937/1938 in a field of a production of particular strategic importance, namely that of Phosphorus. In his affidavit (Haefliger Exhibit 53, Document No. 50) the former Vicepresident of Monsanto, DuBois, states that due to the cooperation by I.G., placing at the disposal of Monsanto not only their latest technical experiences in this field, but also the assistance of its experienced technicians, Monsanto was in the position to greatly improve, accelerate and cheapen their production-process, and it is particularly significant in this connection, that the exchange

of technical experiences between I.G. and Monsanto continued even after the outbreak of the war via Switzerland.

I now pass on to three pieces of evidence offered by some other defendants on this particular subject.

First comes a particularly important Ter Meer Exhibit 68, Document No. 230, dealing with the erection of a new dye-stuff plant in Manchester, England, under a contract closed between I.G. Farben and Imperial Chemical Industries Ltd., London. Under this contract Farben placed at the disposal of I.C.I., beginning in 1937, all their latest experiences in this field along with three technicians, who were sent to Manchester by I.G. for the purpose of setting up the new plants and who stayed in Manchester until the 25th August 1939. This again is highly significant as to the knowledge of the I.G. Farben gentlemen regarding Hitler's aggressive plans, because no arrangements at all were made by Farben, to see to it, that the valuable secret technical data regarding the production of dye-stuffs were either safeguarded in England or brought back to Germany.

Next comes Ambros Exhibit 140, Document No. 6A-804, showing -which is of particular significance- that the defendant Ambros negotiated with two gentlemen of the Canadian firm Shawinigan Chemical Ltd., who visited the plant of Ludwigshafen, on the 1st of August 1939 regarding the licensing of the I.G. process for producing Ethylene from Acetylene and further conversion of the Ethylene to Glycol and Diglycol, both products of strategic importance.

Last not least I may refer to Schneider Exhibit 21, Document No. 118, showing that the British War Office in the end of 1938 made inquiries as to the erection of three plants for the production of concentrated Nitric Acid in England and that I.G. Farben was prepared to place at the disposal of the British partners their experiences and know-how, regarding also their process for the synthetic production of nitrogen, forming the basis of the Nitric Acid - production.

This last example is particularly significant because of the participation of the British War Office in the negotiations, a fact which did not prevent I.G. Farben to express its willingness to grant its assistance in the just described manner and which therefore once more shows the utter unsoundness of the Prosecution's theory regarding Farben's participation in the furthering of Hitler's aggressive plans.

The Defense of Paul Haefliger feel that, to add any further remarks on the subject under Count I of the Indictment, which has been so thoroughly dealt with by other Defense Counsel, would be superfluous, especially in view of the extremely poor and irrelevant evidence offered by the Prosecution against Haefliger in this respect.

I think I can be very short as well with regard to Count II of the Indictment.

As to Farbens transactions in P o l a n d, the Defense has shown that Haefliger had nothing to do whatsoever with those dealings, and that his participation in the single discussion at the Reich Ministry of Economics was confined

to arrange a meeting for the defendant v. Schnitzler, at which Haeffliger did not attend.

The facts concerning the alleged case of spoliation in Norway have been or will be thoroughly discussed by other counsel. As far as the defendant Haeffliger is concerned, no initiative was displayed by him, his participation in the Norwegian transaction being restricted to certain negotiations, preceding the setting up of the new company Nordisk Lettmetall. He did not hold any position in the Norsk Hydro and was not concerned with the negotiations with their French shareholders. The evidence produced by the Defense shows clearly the attitude of Haeffliger being directed to protecting as much as possible the interests of Norsk Hydro from the attempts of the Reich authorities, to take a substantial interest in Nordisk Lettmetall. It is in my opinion inconceivable that in view of this indisputable attitude Haeffliger can be implicated of having participated in any act of spoliation.

In order to show the true spirit of Haeffliger in dealing with enemy property during the war, the Defense has offered evidence on Haeffliger's activities with regard to the extremely valuable Petsamon Nikkeli concession, owned by the Canadian Mond Nickel Corporation. Again it is highly significant that Haeffliger successfully resisted the wishes of certain Reich authorities, to bring about an expropriation of said concession by the Finnish Government, for the reason that he would not have the old friendly relations between I.G. and the Mond Nickel Corporation hampered by any such act. I would say that this again is a convincing

proof of that "rightful thinking" on his part, which Haeffliger ascribed to the Swiss nation in the speech to which I referred at the outset of my arguments. And for this very reason the Defense cannot conceive of this man being involved in any other alleged act of spoliation, quite apart from the fact that the Prosecution failed to introduce any sufficient proof bearing out his participation in such activities.

As to Count III of the Indictment, it is sufficient to point out once more, that Haeffliger during his whole career of over 35 years standing, had nothing to do whatsoever with labor questions, not having been in the management of any plant or works combine or in any of the I.G. committees dealing with such questions. But all the time he had no reasonable ground to suspect, that this field of industrial activity was not being looked after within the I.G. in a highly competent and model way.

Apart from that the Prosecution has not offered any evidence connecting Haeffliger with any of the crimes alleged under this Count of the Indictment. His own testimony shows that he had extremely vague ideas concerning questions of labor including the employment and treatment of foreign laborers.

As to Count V of the Indictment, it is sufficient to refer to the observations made with regard to Count I. And I may once more stress what Haeffliger said during his examination in chief, namely that the fact that he, being a foreigner and a Swiss consul, nevertheless remained member of the Vorstand,

is a particularly strong evidence in support of the position of the Defense, that the conspiracy of the Farben Vorstand-members exists only in the imagination of the Prosecution.

Your Honors,

When thereafter in closed Court you assume the heavy responsibility of passing judgment in the biggest trial of this nature, which ever was pending before a Tribunal, you will undoubtedly view very carefully the evidence presented by both sides in the case of Paul Haeffliger.

I tried my best to present his case in the light of the simple and true facts which have been exaggerated and misinterpreted beyond all bounds by the Prosecution.

And it is my firm conviction, as I respectfully submit, that, taking all these facts in their true and simple significance and not indulging in any theories of responsibility, which are dramatizing those facts, there can be only one conclusion:

That the defendant Haeffliger under all Counts
of the Indictment is

not guilty.

Folder Pearl Hayde (SWEETSH) /

Case 6
Defense

Military Tribunal No. VI

Final Plea

for

Erich von der Heyde

Submitted in
June 1948
by
Karl HOFFMANN
Attorney

Aug



FRIEDRICH HENRICH VON DER HEYDE

Your Honors,

The Prosecution has brought my client Erich v.d. HEYDE to trial before this High Tribunal and claims he is guilty under Article II of the Control Council Law No. 10.

The crimes listed in Article II, paragraph 1 are classified as crimes against peace, war crimes and crimes against humanity as well as membership in an organization which was declared criminal by the International Military Tribunal.

Paragraph 2 of Article II establishes the persons who may be classified as having perpetrated such acts and paragraph (2) f contains some directives, according to which a perpetrator might be a person who held a higher political, government or military rank (including a position in the general staff) or one who held an important position in the financial, industrial or economic sphere in Germany.

While the first part of these directives points to the leaders of the Party, the authorities and the army, the second part includes the entire economy of Germany and places persons and organizations having no connection with the affairs of state either as politicians, functionaries or military men, on an equal level with the main active functionaries of the state.

The Prosecution is conducting this trial as an economic trial. It must therefore be assumed that it refers to the latter part of these directives. But even if, in addition, it also applied to the first part of the directives, this would be irrelevant so far as the following statements are concerned, because, to begin with, the only matter to be discussed is the question as to how the expression "a higher" position (gehobene Stellung), as used in paragraph 2 and following, article II of Control Council Law No. 10, may be reasonably interpreted. The expression "a higher position", viewed disconnectedly, admits of many interpretations.

A Police-Inspector is already considered as holding a "higher" position in his district, and the same applies to the position of a lieutenant in his company.

This would establish millions of "higher positions". It cannot be assumed that Control Council Law No. 10 aims at all these "higher positions". It undoubtedly refers only to a certain number of them.

These can be defined according to the following points of view: In contemplating the sociological structure of the state one realizes that the latter is partitioned into many levels. These levels lie one above the other. On each level there are many individuals, some of these on an equal level with others, have a "higher position".

Just as safely it may be assumed that Article II, paragraph 2 and the following, does not aim at the holders of all "higher positions" ^{i. e. the fact that in adhering to} as firmly established appears to be the example of the levels, only the highest of these can be taken into account under the directives according to paragraph 2 and following.

FINAL PLEA VON DER HEYDE

This view is also supported by Article II, paragraph 2 and following itself.

In Article II, paragraph 2 and following, the enumeration of higher positions is supplemented in brackets: Inclusive of a position in the General Staff.

This signifies that, according to Control Council Law No. 10, higher military positions should, as lowest grade, include the General Staff.

Since this could not be assumed as a matter of course, it had to be specifically stated. It further signifies that the level applied to politicians, state-functionaries and ecclesiastics must be the highest applicable in each category, for there there is no mention of the second-highest level being included, as in the case of the militaries.

Actually Control Council Law No. 10, under Article II, paragraph 2 and following, therefore aims only at the highest peak positions. It does not apply to people occupying higher positions on lower levels.

In the same way as a book-keeper is not included in this group of perpetrators, because his higher position in the works is on a level which is not under discussion here, so the position of my client Erich von der HEYDE must be begin with have been ^ahigher one and, secondly, on a level comprehended by the Control Council Law

FINAL PLEA VON IER HEYDE

No. 10, article II, paragraph 2 and following.

The Prosecution has confirmed the accuracy of these presuppositions by referring to the defendants as the "23 leading directors of I.G."

It is not my intention to examine here whether this is justified in general, but shall limit myself to an examination of this with regard to my client Erich von der HEYDE.

As to my client Erich von der HEYDE, the prosecution is wrong in applying attributes such as "leading" and "director" to him. I have pointed out and proved more than once that my client was neither Director nor Prokurist but an employee the same as ten thousand other employees of I.G.

Not until the spring of 1939 did he receive a minor recognition of his more than 13 years' activity with I.G. when, at the age of 29, he was appointed "head clerk" in German "Sendungsbevollmächtigter".

This appointment as "head clerk" was however devoid of any legal or economic importance.

FRIEDRICH VON DER HEYDE

It had no legal importance, because no entry was made in the trade register and, consequently, von der HEYDE was not authorized to represent the firm in relation to others; it was of no economic importance because Friedrich von der HEYDE's sphere of activity was without any influence upon IG's over-all economy.

In the German economic hierarchy, the ladder starts with the Prokurist. This in any case applies to a Konzern like the IG. in every respect.

It is only after the Prokurist that the rank of Director follows.

The indictment is therefore factually and formally wrong in describing my client, Friedrich von der HEYDE as "director".

This he never was.

Neither did he hold any higher position.

For the time being I do not intend to talk about the general level of his position.

For the time being, I will only describe his work, in order to prove that he did not even hold a "higher position" ("gehobene Stellung").

According to his professional training my client worked as a doctor of agricultural science in the IG Department for Agriculture both in Ludwigshafen and in Berlin.

FINAL FILE: VON DER HEYDE

In Berlin his technical field at the outbreak of the war was called "Nitrogen and Agriculture".

In addition Erich von der HEYDE's field, as from 1 January 1939 onwards, included military economy.

This was the name of a sub-department constituted on 1 January 1939 and including affairs concerning indispensable persons as well as the Sub-Department of the Security Officer (Abwehrbeauftragter).

In all these fields my client worked exclusively as specialist (Sachbearbeiter).

Only as Security Officer had Erich von der HEYDE a position which was different than his other activities.

Whilst in all other fields he received instructions from his IG superiors, he also received, in his capacity as Security Officer, instructions from government departments.

It is, I think, not worth while going into details concerning his simple activities in the special fields: nitrogen and gasoline, and in regard to questions concerning indispensable persons. I think that this is generally known.

However, I wish to talk about his activity as Security Officer.

Erich von der HEYDE has himself given a description of his activity as Security Officer in the IG Department N 7 (IG Farben Berlin Office).

FINAL FILE VON DER HEYDE

He has stated that the Security Officer had to see to it that the members of his Department were instructed about the necessity for secrecy and about the correct handling of secret documents.

To sum up: the purpose of his activity was to see that instructions about the secrecy and the correct handling of secret documents were given to the staff of the concern for which he was working.

In Department St. 7, this concerned a few hundred persons. The state decided what enterprise was pronounced Abwehrbetrieb (Security enterprise).

Only after an enterprise had been pronounced a security enterprise, was the security officer appointed.

Not the Security Officer, but the government departments made decisions in cases of violation of security measures.

His activity at that time was, in reality, only that of an intermediary and instructor.

There were thousands of Security Officers in Germany. They represent a measure which may be introduced by any state and, probably was adopted by many states.

The Security Officer does not hold a "higher position".

In the spring of 1940, however, my client Erich von der HEYDE was appointed one of the deputies of the IG Main Security Officer.

FINAL PLEA: WOLFGANG HEYER

This case about as follows: -

After the outbreak of the war the OKW Department Security instructed all large enterprises in Germany with several plants spread all over the territory of the Reich, to establish a central agency in the person of a main Security Officer to be responsible for uniformity of all security measures in these plants.

This was a war measure and had to be carried out as an order of the government.

IG established Agency A for this purpose. Dr. SCHNEIDER became its Chief as main Security Officer. My client Erich von der HEYER was appointed his deputy in the commercial sector.

His appointment was effected because Agency A was for practical reasons to be stationed in Berlin. Dr. SCHNEIDER who was in Leuna (Central Germany), thought it would be practical - as the agency was stationed in Berlin W 7 - for the small amount of work also to be carried out by the local Security Officers who were residing there in any case. The activity of Agency A was in any case limited to passing on, either verbally or in writing, the instructions and orders issued by the OKW Security Agency.

FINAL PLEA VON DER HEYDE

This in any case applied to the commercial sector, the only one in Agency 2 in which my client worked as Dr. SCHNEIDER's deputy.

In view of these circumstances, which I have discussed in detail in my trial brief, I have come to the conclusion that my client, even as the main Security Officer's deputy in the commercial sector, held no "higher position".

It must not be forgotten that here, too, a certain relativity of all things must be taken into account.

Naturally, a Security Officer in the commercial sector of Agency 1 or in an enterprise such as Berlin W 7 of the IG, had to possess a certain intellectual versatility and a gift for writing and expressing himself.

This will distinguish such a man as compared with those not needing these qualities for their work.

But my client, Erich von der HEYDE, a doctor of agricultural science, possessed this versatility owing to his education; and the intellectual versatility, needed for his work as Security Officer, was not more considerable than that required for his other work.

FINAL PLAIN VON DER HEYDE

In summing up I must therefore state that the actual sphere of work of my client Erich von der Heyde, i.e., "nitrogen and agriculture", as well as his former military economy which dealt with questions of indispensable personnel, his position as security officer (Abwehrbeauftragter) of Berlin N. 7 and as Dr. SCHNEIDER's deputy in the commercial sector of security (Abwehr) always showed him as an official-in-charge but never as an independent person in any higher position.

The fact must not be forgotten that my client Erich von der HEYDE stated his activity at office A during the war in the spring of 1940, and left it more or less in September 1940 when he was inducted.

The occasional assistance which he rendered in this field, even after he was inducted, stopped altogether in about 1941. In any case it was restricted to questions of a general character.

The activity of my client as a security officer (Abwehrbeauftragter) comprised only the forwarding of orders and regulations prescribed by the state in the interest of secrecy, and this cannot be described as disreputable or as an offence against morale.

Even such letters as Document NI 7626/ Sh. 927. Doc. book 49 and NI 1447/ Exhibit 930 / Doc. book 49,

FINAL PLEA VON DER HEYDE

addressed to von SCHNITZER, were not written on his own initiative. They are the result of directives given by government offices and were written by my client, Erich von der HEYDE, to Herr von SCHNITZER, with the concurrence of Dr. KUNIG R., deputy director of Berlin N. 7.

As a security officer (Abwehrbeauftragter) in a commercial enterprise and for some time deputy of the main security officer (Hauptabwehrbeauftragter) of the commercial sector, my client had nothing to do with foreign workers, concentration camp detainees or prisoners-of-war.

Such tasks - if they were to be dealt not at all - could only have occurred when my client had been in the armed forces for a long time and had nothing more to do with these matters.

After having dealt with the "high position" of my client I shall now examine the general scope of his activity within N. 7.

First of all it must be stated that N. 7 as such comprised mainly the Central Finance Department, the Political Economy Department and the Economic Policy Department, but could not be described as, say, the head of I.G. N. 7 in Berlin was a link in the structure of the I.G. in the same way as every works. Furthermore

FINAL PLEA VON DER HEYDE

my client was only^a/referent at the Economic Policy Department of
N. 7.

It is therefore obvious that under these circumstances his influence
on the general administration of the IG was still less, for my client
was neither a member of the Central Committee,
nor of the Vorstand,
nor of the Aufsichtsrat,
nor of the Technical and Commercial Committees,
nor at any time member of a Commission.

In view of the above I am therefore fully justified in saying
that my client worked on a plane which has never been considered
by Law No. 10 of the Control Council as coming under Article II
number 2 f.

When I named Eric von der Heyde as a witness in his own right
to make all these statements which are not contested by the
Prosecution, I was of the opinion that in the face of this the
indictment could no longer be maintained in a factual sense.

I am also fully convinced from the legal aspect that in view of
these statements there is no possibility of establishing a connection
between my client and the crimes enumerated in Article II, number
1 f.

FINAL PLEA VON DER HEYDE

In this connection I must point out that the Prosecution itself only considers possible guilt according to Article 2, number 1a, in connection with number 2 f).

Number 1a to c) are beyond any possible consideration, for even the Prosecution does not submit that my client as referent for agriculture at the Economic Policy Department of NW 7 in Berlin took any active part in the planning or preparation of an aggressive war.

He participated in these things just as little as he personally committed war crimes or crimes against humanity.

As long as he was employed at the IG, he sat at his office desk and dealt with his special subject. He did his work as hundred of thousands also did their work.

His activity as security officer (Abwehrbeauftragter) was confined to the forwarding of orders and regulations from governmental authorities. If he was asked occasionally by the security office (Abwehrstelle) to take an active part, he informed his superior about such orders and confined himself to the execution of instructions given by his superior.

FINAL PLEA VON DER REYNE

Apart from the fact that in my opinion my client was not employed in a leading position, he was also working on a level - in order to put this once more expressly on record - which never came under the Law of the Control Council, Art. II, number 2 f.

Even today I do not know why, in view of this fact, the Prosecution includes my client in this trial. Did it suspect anything particular behind the fact that he had been a security officer (Abschreibeauftragter)?

But there were many hundreds of other persons at the IG besides him who occupied the same position and other tens of thousands of security officers all over the German Reich.

Did the Prosecution find anything particular behind "Office A"?

However, Office A was only an organisation for simplifying and assuring the distribution of security measures ordered by the state during the war.

Did the Prosecution accept the wrong assumption that my client was a real member of the SD (Security Service) in order to include him in this trial?

In this connection I must submit the following argument.

FINAL PLEA VON DR. HENYIS

Two days before he was served with the indictment, my client was brought to Puerberg from Hamburg, where he was living as a free citizen, and was told that he was to appear here as a witness. When my client came to Puerberg, he continued to believe that he had been called as a witness - having deposed two affidavits immediately after his arrival - until he was served with the indictment which had been completed long ago.

Would it not have been better to have subjected him to a detailed interrogation, to have told him that he must now defend himself, since he was to be indicted.

Then a great many things would have been made clear, in particular, the part played by my client with respect to the S.D.

My client was, in any case, not a member of the S.D. in the sense required by the judgment of the IMT.

In 1934 he became a member of the Reiter SS (SS Cavalry), that organization which the IMT described as non-criminal, and he remained a member of this Reiter-SS until 1941 when he was drafted into the Wehrmacht.

However, it is true that my client had connections with the S.D. These connections existed until 1934. They ceased when the Chief of the S.D. OHLSDORF was no longer interested in information which could only be described as elementary instruction in

FINAL FILEA VON DER HEYDE

political economy, and when, on the other hand, my client approached this office with so many requests that he not only made himself a nuisance but became suspect.

In the following, I will now deal with the manner of my client's activities for the S.D.

In the first part of 1938, he frequently provided the S.D. with reports and information on economic problems. He acted with the full approval of Dr. KREGER, the deputy director of the SW 7 concern. At the same time, Dr. KREGER made use of this connection with the S.D.

There were many things in the Third Reich which could be more easily settled through connections with such an office than if these connections were lacking. Foremost in this respect was the assistance which the I.G. wished to give to various German Jews, in order to enable them to go abroad. That was a noble, but not an agreeable task.

Whoever is familiar with the German conditions, knows that it was unpleasant even to enter the Reich Security Main Office and to conduct negotiations there with people in authoritative positions. Therefore everyone was glad that von der HEYDE undertook to do this. However, as a member of the SS, his intervention on behalf of the Jews, could not have continued with impunity for any length of time, and since the economic information which the S.D. had received from my client in the beginning, was also no longer new or

FINAL PLEA VON DER HEYDE

interesting, relations became visibly cooled, so that CHELIMOFF, the Chief of the S.D., answered my questions put to him in the witness stand here, in the following manner: (German transcript page 4522 ff):

"Question: Witness, you said that a certain special activity of the defendant von der HEYDE ceased in 1939. Would you tell me please, at approximately what time in 1939?

Answer: When I said 1939 I meant that that was the latest possible date. I am unable to give you a more exact date. It may quite well have been in 1938.

Question: Witness, what was this special duty (sachliche Aufgabe) of the defendant von der HEYDE at that time. If I understood you correctly, you describe him as a confidential agent (Vertrauensmann)?

Answer: Yes, special task is, however, much too strong an expression. The position which Herr von der HEYDE held in relation to the S.D. (Security Service) can only be understood if one views the initial period of the S.D.'s existence, and if it is borne in mind that even the slightest good will with regard to the giving of information concerning certain technical problems, was valuable to the S.D.

.....

Question: Was he paid for this work?

Answer: Of course not.

Question: Did he work in your office.

Answer: No.

Question: About how often did he come to your office?

Answer: That I cannot tell you for certain, because I myself only saw him very occasionally.

FINAL PLEA VON DER HEYDE

But it was no doubt customary for him to discuss matters with the head of the industrial section once or twice a week or a fortnight during the early period.

Question: Did Herr von der HEYDE denounce anyone to you?

Answer: He never did that, and it would moreover have been quite out of place as far as we were concerned, since we were not interested in denunciations.

.....

Question: Then the importance of the defendant von der HEYDE must have been very slight as far as you were concerned.

Answer: It was so slight that I, at any rate, was not interested in promoting this contact, nor in affording him any of my time for the purpose of discussing technical questions with him."

Perhaps it may also be of interest to this Tribunal, with regard to the assessment of ORLENBLOFF's statements, to hear the characterization given to ORLENBLOFF in the judgment against him on 8,9 April 1948, transcript page 7010.

There it says, and I quote:

"Whatever the deeds for which ORLENBLOFF must be held responsible, he need never feel guilty of taking an evasive stand in the witness-box".

FINAL PLEA FOR DR. HENSE

During the course of the trial, the Prosecution has attempted to prove, by means of correspondence exchanged in the year 1939 and relating to a marriage permit, for which my client had to apply, that he did in fact belong to the S.D. and not the Reiter SS.

This exchange of correspondence arose from the fact that approximately in May 1939, when my mandator announced his intention of marrying, he was told by the competent official that the marriage of a member of the SS could not take place without the legally prescribed approval of the Reichsfuehrer SS. Therefore he had to obtain the marriage permit.

However, whenever my mandator himself appears as the writer in this exchange of correspondence - which I deal with again in my Trial Brief - he only describes himself as "honorary collaborator of the S.D. Main Office".

In no place does he describe himself as "Member of the S.D. Main Office".

This he would, however, have been bound to do, had he actually been a member of the S.D.

For its part, the Prosecution has also pointed out, that there is a card index, bearing the additional note "Fuehrer in the S.D." alongside the first entry recording the promotion of my client in 1938, to the rank of Untersturmfuehrer. This additional note does not appear in any of the subsequent promotions.

We know today the value to be placed on such card index with regard to their accuracy.

PIDEL PIEL VAN DER HEYDE

At that time it was of no importance to the person keeping the index whether the individual indicated on the index card belonged to the SD or the Reiter-SS. He probably regarded the SS as just another unit.

I should however like to refer to the question which the worthy judge Curtis J. SILE sent to the Prosecution, page 12766 of the German transcript:

"Was this card made out by van der Heyde?"

The answer given by the Prosecution was:

"That card was not made out by him."

The clerk in charge of the index could not in effect make any member of the Reiter-SS into a member of the SD, but he could fill in the index-card fully or hastily or inaccurately, and that is what happened in the case of the index-clerk in question.

I am not only saying this because it is the explanation most favorable for my client.

I also offer as proof the fact that only the first promotion was recommended by the words "SD Fuehrer", while this remark was not added in the case of the other promotions.

If the index-clerk had acted correctly, he should have written "promoted by the SD" in the case of the first promotion. That would have made it quite clear that the promotion had been instigated by the SD, but had actually taken place in the old unit of the Reiter-SS.

FINAL PLEA VON DER HEYDE

But the fact that the remark "SD Fuehrer" does not occur again in the case of the other promotions shows that when subsequent entries were made there was nothing to indicate that von der HEYDE was a member of the SD, and therefore this entry was discontinued.

I have already pointed out in the above that von der HEYDE also was promoted, the last promotion taking place in 1941. In the examination of my client Erich von der HEYDE I referred to the fact of this promotion.

It is correct that his promotions in 1936 were primarily due to the intervention of the SD.

In the same way as others volunteered to help with collections or acted as auxiliary police, so von der HEYDE was active in the young, but increasingly powerful SD, giving instruction in the rudiments of political economy.

Von der HEYDE deserved some reward for this and since the SS with its steady growth could afford to appoint leaders, my client was promoted to Untersturmfuehrer.

In this connection OHLENDORF makes the following statement (German Protocol, pages 4528/29 English Protocol pages 4508/9)

Question: Witness, you have spoken about the importance of the defendant von der HEYDE here. Now, the defendant von der Heyde was promoted as an SS man. How do you explain this fact in connection with the opinion which you have just given us?

FINCH, P.M. VON DER HEYDE

Answer: Earlier, I was asked whether a confidential agent ("V-Mann") and i.e. von der HEYDE was paid for his work and I testified that they did not get paid. Therefore promotion was the only thing that we could offer to our confidential agents.....

My client, Erich von der HEYDE's own opinion of these promotions is best shown by his own statement: (German Protocol, pages 12729, English, pages 12429/30).

Question: Another question, von der HEYDE: Dr. CHLENDORF discusses the significance of the rank of a Hauptsturmführer. I do not want to discuss this rank here in any way, but I want to ask you quite personally, were you very proud of this position?

Answer: No, as a Reserve Officer, I did not take seriously the wearing of a uniform in my organization, or my position in my organization.

Question: Could you perhaps explain that; what did you mean did not take it seriously?

Answer: The rank in an organization - for instance the rank as a Hauptsturmführer in the SS never seemed comparable to me to the rank of a captain in the Wehrmacht, in the Armed Forces. I always had the feeling that it was merely a pseudo-rank, - that is, that an attempt was made to express more with it than really was behind it.

Question: You yourself were already an officer in the Wehrmacht?

Answer: Yes, I was a reserve officer."

FINAL FILE: VON DER HEYDE

It is, however, an established fact that my client Erich von der HEYDE never concerned himself by supplying the SD with information which was favorable to a denunciation.

On the contrary, he used his connection with the SD to the advantage of many people who were grateful to him, so that only good came of a connection which the Prosecution is now making the subject of an accusation.

This I can state without alibi, for the facts themselves prove it.

I have to refer to another point.

My client, Erich von der HEYDE joined the army in 1940.

Any one with any knowledge of German conditions knows that, at that time, men over 40 unless they were already active in the army, did not have to enlist.

~~XX~~
~~XX~~

If it had been at all necessary and if he had wanted to he could easily have been declared indispensable. But nothing of the kind happened. Erich von der HEYDE joined the army. Perhaps he was afraid of being assigned to the Waffen-SS before long. This would not have been to his liking at all.

FINAL PLEA VON LEBE HUYER

For it is true that my client wished to disengage himself gradually from matters which were alien to his profession, such as the department Military Economy or his activity as ~~Security~~ Officer.

The reason for this, however, was not that he considered this activity to be of somewhat ill repute.

Yet he recognized that in this way he was becoming more and more estranged from his profession and that the work which was gradually being assigned to him had no longer anything to do with the actual scope of his profession.

During the war tasks connected with agriculture were more and more restricted in favor of war production and for this reason he took the only course before he became superfluous in his professional sphere as a result of the war.

The Prosecution has also tried to establish a connection between my client and the I.G. during the time when he was serving with the Wehrmacht.

This attempt has failed.

It is true that he still carried out a few commissions for the I.G. after he had left for the Wehrmacht. However, it was after all the firm for which he had been working for 15 years and to which he wished to return after the war.

Therefore, if he was asked by his firm to help in this or that way, it was only natural that he should do so. If he was able to, and was given leave for the purpose by the Wehrmacht, he offered his services.

FINAL PLEA FOR IHR HEYDE

However, as early as the beginning of 1942, this was no longer possible to any considerable extent.

What conditions were actually like is best shown by the statement of witness KESSEL, another member of the military office of my client Erich von der HEYDE.

In answer to my question - page 12778 of the German transcript - he declared:

"Question: Witness, do you know anything about any leave which von der HEYDE was supposed to have been given frequently to take care of personal matters in his civilian life?

Answer: I myself cannot remember that Mr. von der HEYDE ever got leave for any special work, and it was very difficult to get special leave in our agency; our group leader was a very excitable man, and he did not like to be surprised by inquiries from superior agencies which he could not answer without his Referenten".

I cannot conclude this Final Plea without quoting the description of Erich von der HEYDE given by an attorney appearing before this High Tribunal, who was with my client in the same organization in Berlin SW 7 during the whole period of the latter's activity there.

This attorney stated: (page 12783 of the German transcript)

FINAL PLEA VON DER HEYDE

"It is always difficult to describe a person in a few words. Human beings are rather complicated creatures. But the most outstanding characteristics which I felt he had were absolute decency and integrity of character and attitude, and absolute reliability. Then he is very sensible and calm, which means one can debate with him very well even when opinions differ."

Today I see many a person whose opportunities of exerting influence were, on the strength of their position alone, on a much higher level than those of my client Erich von der HEYDE, freed of all responsibility.

I do not object to this, for I only wish the best to everybody.

However, I am all the more justified in standing up for the liberty of a man who could bring about nothing, nothing at all, of that with which he is being charged.

FINAL PLAN VON DER HEYDE

CERTIFICATE OF TRANSLATION

4 June 1948

We, the undersigned, hereby certify that we are duly appointed translators for the English and German languages and that the above is a true and correct translation of the Final Plan von der Heyde.

pages 1; 1 - 4
20 - 23

M.E. MASON
ETC No. 6176

" 5 - 9

HELMAN STERNFELD
ETC No. 20127

" 10 - 14

H.B. RUSSMANN
ETC No. 20128

" 15 - 19

A.H. DOVEY
ETC No. 20115

" 20 - 25

MONICA SELLFORD
ETC No. 20143

" END "

Finn Rætt, Hærvind (Eskish)

Case 6
Defense

TRANSLATION OF FINAL PLEA HOERLEIG
OFFICE OF CHIEF OF COUNSEL FOR WAR CRIMES

FINAL PLEA

for the defendant
Professor Dr. Heinrich Hoerleig

in case
U.S.A. versus Krueh and others.

Defense Counsel:

Dr. Dr. Otto Helte

Thurg



FINAL PLAI ROUREIN

Mr. President, Your Honors!

Since I have started my activities here at Saarburg as a Counsel for the Defense, the problem has occupied my mind, why so frequently I have been at a loss to understand the trains of thought and the argumentation of the Prosecution. In all these trials it has been expressed that the officers of the Prosecution and the Counsellors for the Defense are called upon to aid the High Tribunal in finding the truth, so that a just verdict could be rendered.

What is truth?

I take it that the Prosecution is trying just as hard to find the truth as I am. But there must be differences in views, the cause of which lies not only in the method, but is also founded in principles.

Whoever has made up his mind to prove a certain thesis is not a seeker after the truth. The endeavour under all circumstances and by all means to obtain the conviction of persons against whom an accusation was raised, is a poor guide.

It seems to me that only he serves truth and justice who endeavours under all circumstances and by all means to ascertain the correct facts, from which guilt and innocence will result necessarily.

This endeavour is incompatible with the desire to prove correct a decision already made.

FINAL PLEA HORRIGAN

This is the position of the prosecution. The Prosecutor has
(F. 2561/52 Germ. Prot.) *Page 156 by Dr. H. J. Lane* referred to the Control Council Law No. 9,
where it is stated in the preamble,

"That I.G. Farbenindustrie knowingly and prominently engaged
in building up and maintaining the German war potential."

I assume that it is known to the High Tribunal that this law,
which pronounces the confiscation of the I.G., rests on the General
Order No. 2 of the American Military Government and that again
on the Directive No. 1067 by General Eisenhower.

The Prosecutor stated there:

"Now, that administratively announced what certainly large
portions of the world, the free world, believed to be
the facts, we are now engaged in deciding and presenting -
from the point of view of the Prosecution presenting to
Your Honors, whether or not there was the requisite criminal
intent, so that these individuals may be held guilty, and
that is not an easy job, and....."

I understand that it is not an easy job to prove what the
Prosecution according to its own statements is to prove. In
politics the decisions are predicated on a purpose. They must
have a purpose.

The decisions of the Courts must not be predicated on a
purpose; they must not pursue a purpose, but only serve the idea of
law and justice.

FINAL PLEA ROSENBERG

The reestablishment of the disturbed balance of order under law by punishing those that have violated the peace of law, in order to deter and warn all those who could be tempted to do likewise:

That is not the purpose, but the idea of court proceedings in all civilized lands.

It is considered one of the greatest achievements of the revolution of 1789, that by the division of authority it freed the judiciary from the overlordship of politics. Through the constitutionally guaranteed independence of the judiciary the Magna Charta libertatum and therewith the dignity of man became a reality.

Nothing is more apt to undermine the structure of States than a relapse into the prerevolutionary time of despotism, the first goal of which it is to make the judiciary serve the aims of politics and thus to sanction the correctness of their measures, conditioned on political views and world outlook, by the dignity of judicial decisions. We have experienced this.

This whole procedure is under the singular handicap of the Control Council Law No. 2, especially in regard to Counts 1 and 5 of the Indictment.

The problem of criminally responsible participation in planning and preparation of aggressive wars has been procedurally decided by the IMT.

FISAL PISA MOERLEIN

In the opinion it has been expressed with absolute clarity that a condition for the assumption of participation is the knowledge of a concrete aggressive plan and the deliberate support of this concrete plan.

The IMT in its differential appraisal of the individual defendants has provided clues which for the judgment in this trial are simply decisive, for the facts regarding the participation of the individual defendants as well as for the facts regarding conspiracy. Among the ¹⁴ that have been freed from Count 1 of the Indictment is also Dr. Schocht. If a man like Schocht, who in August 1934 was appointed Reichminister for the Economy and in May 1935 General Plenipotentiary of the Economy, in which position he remained until 1937, and from then on stayed until 1943 as Minister without portfolio, is acquitted from the charge of participation in the planning and preparation of aggressive war, it appears impossible to convict the men sitting here in the dock, without concrete proof of their actual knowledge of Hitler's plans. Quite particularly is this true of Prof. Moerlein, whose activities precluded any contact with politically relevant or oriented personalities.

It is easy to say that Hitler could not have started and carried through this war, if there had been no I.G. This thesis also sounds so "convincing" for someone who is not used or willing

FINAL PLEA FOR BLAISE

to examine the objective and subjective facts (actus et mens rea) before pronouncing judgment.

As little as it is "convincing" to make the economic development responsible according to the dialectical, materialistic conception of history, so that the individual criminal responsibility of the individual is precluded, just as little is the mere proof of criminal happenings sufficient, in order to regard as criminally responsible each link of a chain, the absence of which is objectively unthinkable.

The element of guilt cannot be gleaned from the category of causal connection. The guilt, that is for the facts of a crime the intention, consists of the proven desire for the criminal outcome, whatever form of participation is alleged (act, aiding and abetting, consenting knowledge prior to completion of the act):

the evidence always must include the proof of the criminal will.

The seemingly so convincing statement that Hitler without the I.G., that is without the industrial capacity of the I.G., could not have conducted this war is as true, as it is irrelevant for the judgment under criminal law. It is true for the I.G., as also for many other enterprises. By the same token this statement could be made in regard to the industrial enterprises of all countries that participated in the war. It would finally be as valid for the war of defense as for the aggressive war.

FINAL PLEA ROERLICH

This proves that the decisive point of view is not the objective establishment that this war could not have been conducted without the production capacity of the I.G., but decisive is the evidence showing the concrete facts or circumstances as well as the time in which this or the other defendant had to come to the clear realization, on the basis of known foresight and in consideration of the individual circumstances, that

Hitler was planning a war of aggression,
that his own work was furthering the realization of this plan
and that, conscious of this fact, he was taking a part
in measures which could only be regarded as planning
and preparation for a war of aggression.

To this effect, I refer to the verdict by the Supreme Court Sales ./.
USA; Volume 7 of the Trial - Brief, submitted by the Prosecution, which
states:

"All articles of commerce may be put to illegal ends. But
all do not have inherently the same susceptibility to harmful
and illegal use."

"One point of view is to make certain that the seller knows
the buyer's intended illegal use, the other is to show that
by the sale he intends - to further, promote and cooperate
in it" (Page 5 a).

"Furthermore, to establish the intent, the evidence of
knowledge must be clear, not equivocal, because charges of
conspiracy are not to be made out by piling inference
upon inference.

this, fashioning what, in that case, was called a dragnet to draw in all substantive crimes." (page 6)

The opinion is expressed by the Supreme Court that

"Suspicion, knowledge, acquiescence, carelessness, lack of concern, are not sufficient"

but that

"Informed and interested cooperation" "stimulation" and "instigation" must be in evidence in this case (Page 6a).

In order to affirm these presuppositions it cannot be sufficient that certain preparations were made for the event of war. Such preparations are made in all countries. The knowledge thereof and cooperation therein are not identical with the preparations for a WAR OF AGGRESSION. Therefore, a concrete proof of facts is required, which do not admit any other conclusion but the fact that a war of aggression is intended. If there is but the slightest doubt, then it must be interpreted in favor of the defendant.

The Prosecution, on the basis of an extensive amount of material covering long years of industrial development, has alleged that, in view of this development, one could only arrive at the conclusion that Hitler wanted a war of aggression.

This is a false conclusion in this case. If Germany's state of armament in 1933 had been normal, if in other words her army and her armament industry had had the capacity enabling them to put up an effective defense if necessary, then an increase of that capacity would have perhaps been a reason to justify a suspicion.

FINAL PIERA EVIDENCE

The fact, however, that in 1933 Germany was to be considered defenseless as compared with the military and armament capacities of her neighboring states which could be regarded as possible enemies, furthermore the efforts by the Stresemann and Brüning governments to achieve a general disarmament in accordance with the Treaty of Versailles, do not leave any doubt in the belief that an increase of armament was to serve the purpose of reaching an equal status, that is a normal state of armament. The outsider could not determine when this state of armament had been reached.

The material submitted by the Prosecution in connection with this count of the indictment, although very voluminous, nevertheless does not contain a concrete clue as to the time when the normal state of effective defense was reached and what concrete circumstances existed which conclusively gave the individual defendant the knowledge that Hitler intended to conduct a war of aggression for no reason.

Neither is there any need for a more detailed explanation that the preparations for a possible war, which also includes the war of defense, do not differ in any way from the preparations for the war of aggression. Just as little is there any need for a more detailed proof that a substantial part of the industrial development during the period from 1933 to 1939 could have just as well served the peace-time economy as possibly the purpose of war.

It is paradoxical to talk of "collaboration" in a system which coordinates the entire economy and their formerly private organizations, in other words which makes them subject to state and political control and institutes the guiding of the economy itself, and to call all regulations, deriving from the aspirations for self-sufficiency on the one hand and the state-socialist tendency on the other, symptoms of a common planning with the aim for war.

In a democratic state with a liberal economic constitution no restrictions are imposed on industrial transactions as a matter of principle. But I am afraid that even in democratic states there is not a complete freedom of action if the government acts in the interest of the country's defense. The Vermittlungsausschuss itself, the plans for the placing of orders (also called mobilization plans), the precautionary measures for air-raid protection etc. are of no material significance from the legal point of view for a criminal intention; all this also exists in other states.

The evidence has shown that the development of the Elberfeld plant, in the same way as the entire pharmaceutical branch of the I.G., had a normal peace-time production and that its production - since it was not included in the four-year plan (German records 6211, page 6153) - was not controlled and much less directed by the government, economy, either in regard to quantity or quality (Affidavit Dr. Jodel, Hoorlein, Document No. 46, Exh. No. 11).

FINAL PLEA HOERLEIN

This precludes the first presupposition for the assumption of Professor Hoerlein's participation in the planning of a war of aggression.

The name Hoerlein and the Elberfeld plant are rarely mentioned in the Trial Brief and the presentation of the Prosecution. The reason for that is the fact that Professor Hoerlein did not hold a position in any organization of the commercial economy, a fact which is also important for the question whether and what possibilities existed for Professor Hoerlein to obtain knowledge of the general development in the armament industry.

It was difficult for the Prosecution to include into the sphere of the armament industry and war planning that branch of the I.G. which devotes its activity to the research of new drugs and the development of insecticide. The Prosecution, in order to accomplish this in the case of Professor Hoerlein, has taken up the completely accidental fact that a substance, discovered in Elberfeld, was used by the Army Ordnance Office in the later course of development as a war-essential substance, in order to charge Hoerlein of having participated in the secret development of poisonous gas to be used in the war in close cooperation with the Wehrmacht."

The facts proven by the testimony of the Prosecution witnesses, Professor Gross and Dr. Schroder, as well as the Defense witnesses, Professor Wirth and Dr. v. Sicherer, are as follows:

1.) The Elberfeld plant never had anything to do with the development or production of poison gas or chemical warfare agents.

2.) During the research work in the field of insecticides a highly toxic substance was discovered in the course of the investigations (Transcript P. 2234 and 2248/49 German, P. 2248 and 2255/56 English). This substance had to be reported to the Army Ordnance Office, in compliance with legal regulations. (Transcript P. 2238 and 2249 German, P. 2244 and 2255 English).

3.) According to the provisions of the law this invention had to be kept particularly secret until it was released by the Army Ordnance Office (Transcript P. 2719 German, P. 2719 English, Prof. Gross' testimony, Exh. Hoerlein 37-43).

4.) The developing of the discovered substance, which was later on given the name of Tabun and Sarin, was in the hands of the Army Ordnance Office (Transcript P. 2241 German, P. 2247 English, and 2245 German, 2255 English).

5.) A "co-operation" between the Elberfeld plant and the Army Ordnance Office did not take place (Transcript P. 2241 German, P. 2248 English), Elberfeld did not accept a development order offered to it by the Army Ordnance Office (Transcript P. 7242/43 German, P. 7183/84 English, Dr. Schrader's testimony, confirmed by ter Meer).

6.) Prof. Hoerlein was not interested in the "development" of the substance and did not advance it, but even hindered it (Transcript P. 2244 German, Page 2250/51 English, and P. 2249 German, P. 2255/56 English).

With this the Prosecution's allegation that Prof. Howeinstein had participated in the development of poison gas for a war of aggression in close co-operation with the Armed Forces is refuted, and it is really unnecessary to take the primary legal viewpoint into consideration that according to the Geneva Convention concerning chemical warfare neither the research nor the development of poison gas were prohibited.

Under Count

"Looting and Spoliation"

the aspects are treated which the Prosecution calls "looting by Contracts". The contracts are considered to be means of camouflage, intended to give a legal appearance to agreements which allegedly had been brought about by exertion of pressure. For this allegation it is useful to the Prosecution that these agreements were concluded after the defeat under the occupation regime. It would be a falsehood to deny that such a state prejudices the personal freedom of the individual. We know from experience how far the limitation of freedom can go. There are occupation powers which completely eliminate the freedom of action in business matters: by investigations, seizure of plants and patents.

Of course, one would not be able to say that the road taken by the IG in France was not influenced by the fact of the military victory. But, in view of the experience made in the same time, one will also be

obliged to say that the fact of the military victory did not influence the IG representatives' methods of negotiating with the representatives of the chemical and pharmaceutical industry of France in such a way that it would be permissible to speak of "looting" under the cloak of a contract.

This applies particularly to the negotiations which Prof. Hoorlein conducted with the French business associates: before the signature and during the carrying out of the so-called contract No. 2 between the IG and Rhone-Poulenc. This was the only contract which Prof. Hoorlein signed together with his colleagues in the Vorstand, Mann. This contract shows already by its form - a simple confirmation by letter - that the agreements concluded thereby were lacking of any anomaly: it was a gentlemen's agreement in its origin and remained it during its carrying out. Materially it was a favorable transaction for Rhone-Poulenc.

There was no document and no testimony introduced by the Prosecution in this connection on account of which blame could be attached to Prof. Hoorlein. This absence of any incriminatory affidavit of any of the French business associates concerning Prof. Hoorlein seems to me to be a strong proof for the fact that none of the gentlemen with whom Prof. Hoorlein had negotiated was prepared or in a position to testify anything which might have incriminated him within the meaning of the indictment.

FINAL HERR HOERLEIN

Dr. Hetsch deposed in his affidavit, Exh. Hoerlein 48:

"All the negotiations known to me between the firm of Rhone-Poulenc and the I.G. in this period were carried on by both parties in an unusually friendly manner, such as is seldom achieved by two companies in international collaboration. The basis for this was the agreement No. 2 which was concluded under the decisive influence of Prof. Hoerlein by which both parties to the agreement were accorded exactly the same rights and the same obligations."

Only in this way the especially confidential relations existing between Prof. Hoerlein and Generaldirektor 30 of Rhone-Poulenc can be explained, for which the latter's affidavit (Exh. Hoerlein 49) is a convincing proof. It requires no more detailed explanation that the delivery of the letter which had been written by Dr. Trefouel, and which contained remarks insulting to Hitler, constitutes a proof not only for the mutual confidential relations but also for Prof. Hoerlein's character and attitude. This way of acting, involving danger of life, seems to preclude the assumption that Prof. Hoerlein adopted at any time ^{then} as other/loyal attitude towards his French business associates.

As to the question of procurement, employment, treatment and feeding of the foreign workers no special charge was filed against the Elberfeld plant which was directed by Prof. Hoerlein and no evidence was submitted.

FINAL PLEA HOFFMANN

The only document concerning this Count, XI-7413 - an affidavit by Meyer - is, it is true, contained in Document Book No. 70 of the Prosecution, but it was not submitted.

In order to prove the incorrectness of the general charges made in Count 128 of the indictment, I submitted 6 affidavits of those persons who had to deal with the feeding, medical attendance, treatment and employment of the foreign workers.

These testimonies prove that the foreign workers at the Elberfeld plant were in every respect given a treatment, food and medical attendance worthy of human beings. But they are also a proof for Prof. Hoffmann's attitude in the question of the treatment of the foreign workers in general. If he in his capacity as member of the Vorstand got knowledge of the employment of foreign workers in other plants, his statement must be believed that he could be convinced that they were treated in exactly the same way as he treated those employed with his plant (Transcript P.-6262/63 German, P. 6206 English). One can only imagine what one does, would do oneself in the same situation.

As regards the

D e g e s c h Count

If one speaks of Z y k l o n - B today, one thinks involuntarily of the gassing of hundreds of thousands at

Birkenau. This fact, probably the most horrible occurrence in the history of the concentration camps, was published since 1945 by detailed reports from Musenberg and by propaganda all over the world, with the tendency of making it appear as though the hell of Birkenau was known to all Germans.

The Prosecution tries, by using the propaganda theory of a general knowledge of Auschwitz-Birkenau, to construct a special knowledge for the defendants in this trial, namely that Zyklon - B had been the agent for the execution of the extermination program and that this annihilation gas had been delivered via the firm of Tesch and Stabenow (Tesch) through the Degesch.

The Prosecution's conclusion that the IG's partnership in the Degesch would be equivalent to the knowledge of the delivery of Zyklon-B to Auschwitz for the purpose of the extermination of concentration camp inmates is constructive, and unfounded since it is based on circumstantial evidence which is lacking in conclusiveness and cogent logic.

It is being overlooked that this Zyklon-B is an insecticide which was internationally employed for decades and recognized as excellent, as it is still today, which is indispensable for combatting injurious insects and thereby for the preservation of the health of millions of people. This conception of its application and general possibility was the decisive factor for every one who had to deal with it, had to judge about it or to apply it, and it probably remained so until he received concrete

knowledge of the misdeeds.

1.) As far as the Elberfeld plant is concerned any substantiated assertion of a connection with the Degesch and the Zyklon-B is lacking. It is to be considered as proven that the "Degussa" was the "managing partner", and that the management of the Degesch attached great importance to its ⁱⁿdependence. (Exh. Degesch 13 and 33). With regard to the testimonies by Schlosser, Transcript P. 10663-65 German, P. 10625/27 English, and by Dr. Goldschmidt, Transcript P. 13077 German, P. 12874 English).

2.) The only connection with the Degesch was created by the fact that Prof. Hoerlein became in 1937 a member of the administrative committee (Verwaltungsausschuss) (Doc. NI-12072, Exh. 1765) and from then on received the annual reports and the general reports.

3.) Prof. Hoerlein did not participate in any meeting of the Administrative Committee or of the partners of the Degesch since 1937 (Transcript Hoerlein P. 6293 German, P. 6238 English).

4.) The name of the defendant Prof. Hoerlein is not mentioned in the documents of the Prosecution, neither in any correspondence, nor in a report, record or the like. No reference is made to him in other documents either.

No facts can be found in the Trial Brief and in the evidence produced by the Prosecution proving a connection of Prof. Hoerlein with, or a knowledge of the internal business transactions of, the Degesch.

The business reports of the Degesch and the general informations submitted by the Prosecution (NI-12206, Exh. 1767; NI-9698, Exh. 1768, NI-6361, Exh. 1771; NI-12004, Exh. 1772, f.1.)

contain no indication of the fact that Zyklon-B was delivered to the Auschwitz concentration camp, let alone for the purpose of gassing human beings.

The figures relating to the sales of Zyklon-B constitute according to the result of the evidence produced no proof of a knowledge of the use of Zyklon-B for the purpose of gassing of human beings.

No evidence was produced that Prof. Ho rlein had obtained in another way knowledge of the fact that human beings had been gassed at Auschwitz-Birkenau with Zyklon-B.

The name of Ho rlein does not appear in the testimony.

Dr. Peters, the manager of the Degesch, and thus the legal and commercial representative of this firm, declared in the stand that he does not know Prof. Hoerlein (Transcript P. 10659 German, P. 10630 English). The testimony by this witness is confirmed by the statement of Dr. Peters which was submitted as an enclosure to the affidavit of Minskoff (NI-15071, Exh. 2123). As is said in the affidavit of Minskoff, Subsection 2, Dr. Peters was asked to

"draw up a separate statement concerning the contacts between Degesch and Farber".

In this statement concerning the contacts the name of Hoerlein is not mentioned at all.

During the Prosecution's cross examination of Herr Mann, numerous documents relating to "contacts" between the Degesch and the IG were submitted (Exh. 2009 - 2109), likewise during the Prosecution's cross examination of the witness Schlosser (Transcript P. 10661/65 German, P. 10624/27 English).

None of these documents contains the name of, or a reference

to, Professor Hoerlein.

Hoerlein's testimony under oath concerning this Degesch complex (Transcript P. 629/93, German, P. 6234/38) is, therefore, credible and convincing.

As a logical foundation of a relation, relevant within the meaning of criminal law, to the criminal use of the Zyklon-B gas delivered by the Testa or the Degesch, the Prosecution should have asserted and proven:

- a) the knowledge of the fact that the Testa and/or Degesch delivered Zyklon-B to the Auschwitz concentration camp,
 - b) the knowledge of the fact that it was intended to use this Zyklon-B for the gassing of human beings, and
 - c) the failure in his obligation to prevent further deliveries.
- No evidence was produced for any of these three facts as far as Prof. Hoerlein is concerned.

The Prosecution accuses Prof. Hoerlein of taking part in criminal medical experiments in concentration camps. It holds him criminally responsible for all criminal medical experiments which were conducted in concentration camps in conjunction with products of the pharmaceutical branch of the I.G..

As in all counts of the Indictment, here too there is a lack of concrete accusations which would enable one to perceive any personal guilt on the part of Prof. Hoerlein.

In cases where there is a lack of concrete evidence for any activity, participation or assistance it is a part of the method followed by the Prosecution in the Nuremberg Trials to base its arguments on the judgment of the Supreme Court in the Yamashita case.

Moreover there is a sphere of office or a sphere of business the "Chief" is held criminally responsible for everything which happened in his sphere; by reason of the duty of supervision and inspection incumbent on him. The Prosecution counters the objection of lack of knowledge by pointing out that these things were generally known, in any case ought to have been known to the "Chief", and, if they were not known to him he buried his head in the sand in order not to see anything.

That is the method which the Prosecution had adopted here, too. For this purpose it has made Prof. Hoerlein a "Chief". He was qualified for this because he was not only Director of the Elberfeld I.G. plant but also because he was well known and esteemed throughout the German and international scientific world. When one encountered him, one met

best known

not only Elberfeld, not only the I.G., but also one of the ~~most~~
~~prominent~~ exponents of German chemo-therapeutical sciences.

For this reason the Prosecution endeavored to produce proof that Prof. Boerlein was the top executive, over-all superior and inspector in the field of pharmaceuticals (German transcript 174, page 194). The attempt to produce this proof can be regarded as a complete failure.

In the first place it is necessary to clear up the organizational relationship of Prof. Boerlein (Elberfeld) to Prof. Lautenschlager (Hoechst). This was done by the Prosecution's diagram (NI-10029, Exh. 47), the Prosecution witness Dr. Strass, the Prosecution affidavit by Lautenschlager (NI-8004, Exh. 307) and the testimony of Dr. Hoeck (German transcript 7240, Page 7181).

Accordingly, it is proved that:

- 1.) There was no top executive in the pharmaceutical branch of the I.G. (German transcript 7240, Page 7181).
- 2.) Prof. Boerlein was not Prof. Lautenschlager's superior (German transcript 1877, Page 1889).
- 3.) The working spheres of Hoechst and Elberfeld were independent (German transcript 1875, page 1887).
- 4.) Prof. Boerlein was *primus inter pares* (German transcript 1877, Page 1889).

As already proved by the above-mentioned diagram of the Prosecution (Prosecution Exh. 47, Boerlein Exh. 56) the Marburg Boehringer plants (serum and vaccine plants)

FINAL PLEA HOERLEIN

were not under Prof. Hoerlein. The relation to Harnburg and the other Behring plants has been made clear by the affidavit of Zahn (Hoerlein Evid. 51, 111 and 112), by the witness Dr. Demitz (German transcript 10942, page 10794), as well as by Prof. Hoerlein's testimony under oath (German transcript 6302/03, page 6247/48, German transcript 6437 page 6387).

Accordingly, Prof. Hoerlein had no organizational relationship either to the Hoechst plant or to the Harnburg Behring plants and the other Behring plants which could be regarded as a top executive position or which gave him the duty of supervision or inspection.

Likewise unsuccessful was the attempt to deduce an authority from Hoerlein's chairmanship at the Main Pharmaceutical Conferences and the Central Scientific Conferences which could be considered as "top executive authority" or "over-all supervision" over the pharmaceutical branch.

From that -

Basic Information (Vol. 1, page 21) of the Prosecution,
from the statements of 8 Vorstand members of the I.G.
(German transcript 2140/41, page 2135),

from von Meer's testimony (German transcript 7240/41,
page 7181/82), and

from Dr. Lutter's affidavit (Hoerlein Evid. 56.)

it appears that Prof. Hoerlein, who as the senior Vorstand member of the pharmaceutical branch of the I.G. had the chairmanship in this mixed committee (Mann's testimony, German transcript 10431, page 10296), was neither a superior of the participants in this capacity nor did he have any right

of supervision or inspection over them.

The allegation of the Prosecution that Prof. Hoerlein had a top executive position or over-all supervisory powers in the realm of the pharmaceutical branch of the I.G. is thereby refuted, so that from this legal point of view no criminal responsibility exists for matters which concern another plant, ~~such as~~ ^{and not} Elberfeld.

The presentation of the Prosecution is lacking in concrete statements, it is based on circumstances, presumptions of guilt and false constructions.

It appears as if the Prosecution considers the use of new remedies in concentration camps as criminal. In his special speech General Taylor speaks of the "great opportunity" which the I.G. recognized and took advantage of by trying out its drugs, which had not gone farther than laboratory experiments, on human experimental subjects, prisoners of war and concentration camp inmates (German transcript 173, page 183).

In order to make these arguments comprehensible we must be familiar with the origin and development of remedies in Elberfeld.

The first stage - in the laboratory, in animal experiments, in self-experimentation - is the development of a substance from the obscurity of research to the light of the realization that a substance possesses the character of a remedy.

FINAL PLEA ROSENBERG

The decisive factors in this stage are:

- a) the realization of the effectiveness of a substance;
- b) the determination of its toxic effects;
- c) the certainty -- as far as one can be humanly sure -- that there is no possibility of any risk to the life and health of the patient.

This stage finds its clearly recognizable conclusion in the so-called exposé made by the research laboratories, which shows the history of the development of the substance, as well as any secondary effects and rules for administering it, for the benefit of every physician who henceforth uses the substance, now become a preparation.

This is followed by the stage of which General Taylor speaks and which

is described as clinical testing.

Clinical testing is the stage of the development of a therapeutic substance in which it is determined on the basis of the scientifically prepared exposé whether the remedy has a favorable effect on a pathological condition or the course of a disease by treating a number of human beings who are suffering from the disease in question.

The task of the Scientific Department and thereby its limits of responsibility have been made clear by Professors Demark, Kikuth and Weses (Hoorlein Exh. 53) and Dr. Luckner, the head of Scientific Department I. (Hoorlein Exh. 106, figure 2 and testimony German transcript 6514, page 6459).

According to this, Dr. MERTENS had the task, as chief of the Scientific Department, to see to it on his own responsibility, after receiving the preparations and the attendant reports, that a conscientious clinical test was carried out. This was accomplished by calling on qualified physicians, clinics and hospitals, which were selected by the Scientific Department, usually through the so-called Pharmaceutical Offices (Pharma Buero) in the large cities in Germany. This had been the custom for decades. The clinical tests were carried out, without that medical authorities had ever raised any objections; they were done without that there had ever been a case of death in connection with the therapeutical ^{tests} experiments (Versuche).

Does the Prosecution really - as it seems - want to establish that it is not permissible to treat sick concentration camp inmates with new medicines? Is it their contention that in an epidemic the same drugs which had been given to German soldiers and civilians should be withheld from sick concentration camp inmates?

Would they not - and rightly so - have described it as a crime against humanity if the IG had forbidden the delivery of the new drugs to concentration camp physicians for the treatment of their patients?

In this obvious dilemma the Prosecution says: it is not the "treating" of concentration camp inmates that is criminal, but the fact that ^{tests} "experiments" (Versuche) with new drugs had been made on concentration camp inmates.

This objection is refuted by the Prosecution itself, which - in the doctor's trial, to be sure- offered the following basic principle for the indictment (German transcript of the doctor's trial pg. 1167):

"The only question we must ask in regard to this exhibit is, whether the 39 experimental subjects contracted this typhoid sickness by natural or artificial means. I declare that no crime would in fact have been committed had these 39 unfortunate persons contracted this disease in the Buchenwald concentration camp and then been used as experimental subjects, in order to test the effects of these drugs, Butechol and Akridin."

I declare that the Prosecution would take this point stand
Or should the Prosecution take a different stand on such an important point in this trial than it did in the doctor's trial? The importance of the official position of the Prosecution in the doctor's trial lies in the fact that it makes the rules drafted for experiments with human beings (German verdict doctor's trial pg. 22/24) not applicable to the ^{trial}therapeutical ~~experiments~~ within the compass of clinical tests.

Independently of this, the defense has proved, through the internationally recognized expert Prof. Bubenandt (German transcript 6235, 6238; page 6178, 6179) and Prof. Heilmayer (Hoerlein exh. 73):

1. The rules regulating experiments set up by Military Tribunal No. 1 do not pertain to therapeutical ^{trial}~~experiments~~, in so far as they do not proclaim a general code of ethics for doctors.

trial

- 2.) The therapeutical ~~experiment~~ is not an experiment but an attempt which, translated freely into English, means "therapeutical test".
- 3.) Since until this day there is no specific, i.e. effective drug against the typhus germ, it would be a neglect of duty as defined by the doctor's code of ethics to withhold a drug that appeared effective by reason of scientific research, from a typhus patient.
- 4.) Accordingly it follows that the use of new drugs within the compass of clinical tests in themselves, is permissible, wherever it may be.

Therefore it can only be inadmissible and punishable:

- 1) when a doctor makes therapeutical experiments with new drugs after previous infection;
- 2) when a responsible person incited these illegal ~~tests~~ *experiments* or knew that a doctor was making such illegal ~~tests~~; *experiments*
- 3) or when such a person gains knowledge of such incidents and nevertheless sends new drugs to this place.

These things must be proved by the Prosecution. Has it brought concrete proof for one of these offences?

Final Plea Hoerlein

In the Hoerlein case we must, according to the presentation of the prosecution, investigate the tests made with the Elberfelder remedies B 1034 and methylene blue.

There is little to say about the drug B 1034. B 1034 is not mentioned either in the Trial Brief of the Prosecution or in the documents presented by the prosecution in connection with inadmissible experiments, and in particular not in the affidavits of the inmate doctors Dr. Tondes (exh. 1715), Dr. Klodzinski (exh. 1717) and Dr. Feikiel (exh. 1716, 1743).

The Defense has offered evidence to show that the assumption was justified that B 1034 could have a good effect in combatting typhus. (Hoerlein exh. 107, file notice of the Scientific Department Leverkusen, dated 14 December 1943, re the verbal report of Dr. Vetter on Periston, B 1034 and Antenol.)

In the cross examination of Prof. Kikuth the Prosecution attempted to prove that the witness, and thereby Elberfeld, knew of the deficiency in the effect of B 1034 on typhus.

(German transcript 12618, page 12467). The witness, who had discovered this preparation for fighting trachoma (eye disease) admitted that he had been skeptical in regard to its effectiveness with typhus. But he declared that the successes, about which he had personally convinced himself through Prof. Seiffert, Leipzig, (German transcript 12619, page 12467) and about which other, important doctors made reports, had caused him to become convinced that B 1034 could have favorable effects on typhus, after all.

Final Plea Hoorlein

The Prosecution presented the Prof. Kikuth exhibit No. 1696 (German record 12646/47, page 12492/93). But this document is just the one that shows ^{that} the Russian woman Doctor T reported favorable effects of the preparation.

Therefore, there is no proof that inadmissible experiments had been made with the Elberfelder preparation B 1034, or that the results of the treatment required a breaking off of the clinical tests. It must always be kept in mind that there is no specific remedy for typhus and that in an epidemic even the slightest success can save hundreds of people's lives.

The facts of the case of

METHYLENE BLUE

require a closer investigation, because they connect the name of Dr. Ding with the Buchenwald concentration camp. Without giving recognition to the value as evidence of the entries in the diary of Ding, the Prosecution can assert with apparent justification that the entries from 10 January - 20 February 1943 (exh. 1600) make it seem believable that Dr. Ding had made a therapeutical experiment with methylene blue.

FINAL PLEA HOERLEIN

On the basis of this entry, the Prosecution made the following assertion:

"Prof. Hoerlein urged Dr. Krugowsky, the highest-ranking hygienist of the -uffen-SS, to undertake inadmissible experiments with methylene blue."

The Prosecution failed to furnish any conclusive concrete proof for this assertion.

Prof. Hoerlein and Prof. Kikuth denied any connection with, and any knowledge of these experiments at Buchenwald. Prof. Kikuth stated under oath that he had spoken to Dr. Krugowsky about his discovery, just as with many other scientists, mentioning that methylene blue had a specific effect upon the typhus germ, so that there was a possibility of a successful therapy. (Hoerlein, Sch. 62).

He was closely interrogated during his cross-examination about the question of the alleged "suggestion" and the alleged "urging" to undertake experiments with methylene blue (German transcr. 12841/42.) He stated under oath:

"Nobody from Silberfeld proposed this. I only spoke with Krugowsky about typhus and Krugowsky told me that there was a great number of typhus cases, and thereupon I told Krugowsky that I had found a drug which was likely to be effective in typhus cases. Thereupon Krugowsky asked me whether he could get that drug, and I told him

that the drug was methylene blue, which was available everywhere, but I was prepared to place a greater quantity at his disposal for his patients if he wanted it."

"I did not know Dr. Ding and heard of him only after the war. Not knowing him, I could not possibly know that he was a collaborator of Dr. Drugowsky".

"During the war I did not see any report of Dr. Ding concerning results of the experiments with acridin, rutenol and methylene blue in typhus cases. Such a report has never come to my knowledge."

"In this connection the testimony of Prof. Kikut (German transcr. 12643, page 12489) may be quoted, in which he states that inmates of concentration camps cannot possibly be suitable experimental persons, because the physical and mental conditions are far from normal; the purpose of a clinical test namely, to reach results of a general applicability, could, therefore, not be obtained. This deliberation of the scientist alone makes the idea that he or Prof. Hoerlein might have spoken to Drugowsky about experiments in a concentration camp appear quite absurd.

But the possibility of such experiments being undertaken after previous infection is beyond any imagination; for, as the evidence has shown, therapeutical experiments after artificial

infection are, from the scientific point of view, absolutely meaningless, as every infection caused by administration of a specific dose of a drug results in a considerably more severe disease than is the case with a natural infection. (Eikuth, German transl. 12844, page 12489/12490), so that it cannot possibly lead to scientific results of general validity.

This fact is, in our opinion, the strangest logical proof, because it cannot be assumed that responsible I.G. men would have done, or tolerated anything so preposterous and at the same time contrary to their own interests.

The sworn statement of Prof. Hoerlein is, therefore, credible in as far as he says that he did, on the occasion of the one, isolated conversation with Mrugowsky, not mention methylene blue experiments. (German transl. 6355, page 6280, German transl. 6338/39, page 6281/82.)

That this statement is correct, is furthermore confirmed by the fact that there was never any exchange of letters between Hoerlein and Mrugowsky (German transl. 6337, page 6281/6282) and that a report about methylene blue experiments by Dr. Mrugowsky never reached Elberfeld (German transl. 6338, page 6283).

The attempt undertaken by the Prosecution to bring the trustworthiness of Dr. Hoerlein into discredit by submitting the Heumann report (Exh. 1866) and referring to page 6 of that document, has failed. By decision of this Tribunal this page of Exh. 1866 and all questions referring to this record were deleted.

The conclusion is, that as far as the Elberfeld products B 1034 and methylene blue are concerned, there is no evidence of

any facts incriminating Prof. Hoerlein from the point of view of criminal law.

The Prosecution tried to infer a particular knowledge of inadmissible experiments undertaken by Dr. Vetter in the concentration camp from the contact between Dr. Vetter and the Scientific Department Laverkensen.

Primarily, the question must be asked, whether or not it has been proved that Dr. Vetter did make criminal experiments.

By no means has it been proved that Dr. Vetter made such experiments with drugs from Albarrfield. The verbal report of Dr. Vetter to the Scientific Department concerning treatment with S 1034 (Exh. 107) allows of no inference to inadmissible experiments, but only to a successful treatment. What is more, the Prosecution, upon which the onus of proof rests, has furnished no evidence for the assumption that this file notice has come to Prof. Hoerlein's knowledge.

The Prosecution is trying to prove its assertion that Dr. Vetter made criminal medical experiments at Auschwitz, by referring to the affidavits of the inmate physicians Dr. Tondos (Exh. 1615), Dr. Klebsinski (Exh. 1717) and Dr. Fekiol (Exh. 1617, 1743). Analysing these depositions in detail, I have proved in my Closing Brief (parts 2 VI)

FINAL PLEA SOMERLIN

that they furnish no evidence for the assumption that Dr. Vetter made criminal experiments with the drugs rotenol and acridin 3682, but that they prove that he has rather treated patients with these preparations.

The Prosecution, which has the burden of proof, has called neither Dr. Vetter, nor the persons treated by him, as witnesses. It may hardly be supposed, nor has the Prosecution alleged so, that all the persons treated by Dr. Vetter have died. In the doctors trial, the Prosecution called a considerable number of the wretched people who had been experimented upon, as witnesses. Would this not have been possible here too? The physicians Dr. Tondos, Dr. Klodinsky and Dr. Feikiel did not name a single one of those who were treated with the preparations rotenol and acridin 3682.

The Prosecution left it in the dark, whether any persons were killed by the use of such drugs, or whether they died in spite of the treatment with such drugs. It rather chose an ostensibly objective explanation of the facts, which left open two possibilities, the causative one and the non-causative one. The suggestive influence of the concentration camps and of the medical block, of those dreadful happenings - without any consideration to any factual connection - and of the retrospective contemplation, was intended to act in the sense of an emotional causal nexus. This tactic is rather a clever one,

as it is directed to people who do not know the things from their own knowledge and experience, but are rather receiving their information through a purposeful, one-sided retrospective representation of the facts.

Since Prof. Hoerlein was never in a concentration camp, and there was neither a direct nor an indirect connection between the Silberfeld works and any concentration camp, and as Prof. Hoerlein had no official contacts either with Dr. Ding, or with Dr. Vetter, the Prosecution had to resort to circumstantial evidence and to guesses.

Prof. Hoerlein was in a position to receive information from two sources:

a.) from the therapeutical conferences,

b.) from the reports of the Leverkusen Scientific Department,

and c.): If it were true that the I.G. had its new products systematically tested in concentration camps, ^{tests} experiments in concentration camps would certainly have been discussed during the pharmaceutical main conferences, the scientific central conferences or the conferences of the outside-representatives. The Defense has submitted affidavits of all the persons participating in these conferences, as far as they were available, in order to make this point clear, 26 persons, who had attended these conferences, stated under oath that in the course of these conferences neither the testing of drugs in the concentration camps was mentioned, nor the inadmissible experiments with IG drugs. (Doc. Hoerlein 118, 121-124, 126-134; Exh. Hoerlein 138-141, 143, 146, 151-155 118-142.).

FINAL PLEA HOERLEIN

Ad b: The Prosecution had submitted letters and file notes about oral reports of Dr. Vetter to his former colleagues in the Scientific Department of Leverkusen. Of these, no report and no letter is addressed to Silberfeld. The Prosecution, for its part, has offered no proof that reports of the Scientific Department of Leverkusen went to Professor Hoerlein. Neither has it introduced Dr. Mertens, the Head of the Scientific Department, or the heads of the Departments Wi I and II, Dr. Luecker and Dr. Koenig, as witnesses, or offered affidavits made by them. Here, too, the Defense, for the sake of clearing up matters, has introduced Dr. Luecker as a witness, and submitted affidavits of Dr. Luecker, Dr. Koenig, Prof. Domagk, Prof. Kikuth, and Prof. Weese, and questioned Prof. Hoerlein on the stand about it. As a result this could be ascertained:

- 1.) It has not been proven that the letters and reports of Dr. Vetter addressed to the Scientific Department ~~had~~ been shown to Prof. Hoerlein.
- 2.) From none of these documents can it be seen that Dr. Vetter made inadmissible tests with pharmaceuticals of the IG, precluding that, even if these letters and reports had become known to Prof. Hoerlein, the latter could have obtained knowled of admissible tests.
- 3.) The German word "Versuch" within the scope of clinical tests means

the treatment of sick persons with new remedies (in the English language "test"), and precludes a supposition of inadmissible experiments.

Thereby the thesis of the Prosecution is refuted, and it is proven that Prof. Hoerlein did not obtain any knowledge of inadmissible tests with pharmaceuticals of the I.G. either through the pharmaceutical conferences, or through reports of the Scientific Department of Leverkusen.

I am firmly convinced that the High Tribunal will recognize that the Prosecution, particularly in the Hoerlein Case, from clearly recognizable reasons of procedural tactics, has depicted general and peripheral events in dark outline, without rendering them subjectively and objectively concrete, without showing the necessary causal connection and the guilt of the individual defendant. The prosecution went along devious paths, which were swallowed up in the jungle. You will not follow them, for you do not want to get lost.

If the Prosecution believes it has submitted evidence which - as it says - does not permit of a reasonable doubt, it is in error. As far as Prof. Hoerlein is concerned, there does not exist any concrete, conclusive proof, not on any count.

FINAL PLEA FOR HERRIN

Wherever knowledge by a defendant may be a necessary element of a crime, the decision in a great measure is influenced by the judgement of the personality of the defendant, his credibility, and his overall attitude to the true values of life.

Apart from the personal impression of the defendant Herrlein on the stand, the following characteristics - gleaned from the evidence - will be of significance, his human integrity, his scientific reputation, the sense of responsibility shown in this field, and his business practices of many years. The proof offered in this regard requires no comment. It speaks for itself and leaves no room for doubt that this man is incapable of any immoral action. This man - no blank page. (kein unbeschriebenes Blatt). You were able to see from documents that Prof. Herrlein was not afraid to speak his mind in Nazi Germany, which was in contrast to the official doctrine, that he fought for the freedom of science, that he - in opposition to anti-Semitic trends - openly interfered in behalf of Jews and helped them. This man is a fighter for truth, justice, and liberty. His picture is clear. But to me nothing seems humanly more significant than the fact that he, as the head of the Winckler works and as a research scientist, refused to link his name publicly with any invention which was made under his leadership, with his help and by his collaboration.

It is difficult for the Defense Counsel to make choice from all of the affidavits and statements of witnesses submitted about Hoorlein's personality. For the defendant it is distressing at his age to be obliged to prove that as a man and a scientist he led a life above reproach.

Prof. Hoorlein is a man carved of hard wood, thanks to whose immense working capacity the Alberfeld works and its research laboratories rose to World fame and international importance.

After a war like the last one, which caused and still causes an immensity of sacrifices and suffering, it is a shocking tragedy to put under accusation a man whose every thought and endeavour was to ease the suffering of mankind and to diminish the number of victims. The number of soldiers is legion who owe their lives and their health to the sulpha drugs, and in the Pacific war to Atabrine. The American public, which in the time of peace hailed the saving of Roosevelt's son, and rewarded Alberfeld and the IG with public recognition, apparently has forgotten that without Alberfeld, and that means without Hoorlein, thousands of parents would mourn for their sons, and thousands of wives for their husbands.

The forgetfulness went so far that originally even Atabrine was made a Count of the Indictment. It was an

FINAL PLEA HOERLEIN

American who said:

"Without Atabrine and without the atom bomb America could not have won the war in the Pacific so quickly".

That was the contribution of the IG works of Elberfeld, and thereby Hoerlein's, to World War No. II. And I think the IG may be proud of the fact that, of the two causes, it contributed that one which also in time of peace brings mankind only healing and blessing.

I cannot and will not portray to you the almost 40 years of activity of Prof. Hoerlein in the service of suffering mankind. You will recognize his importance if you realize the significance of any of the many eulogies offered in this court, or written down in the documents submitted.

Dr. Boehringer (Hoerlein Exh. 117) found these words:

"I see in Prof. Hoerlein one of the greatest benefactors of mankind, who in history belongs in the same ^{time} niche with Pasteur and Koch. To Prof. Hoerlein surely hundreds of thousands of people owe their lives. I cannot keep myself from being convinced that the day will come when his distinguished services will be appreciated."

Unforgettable are the words of Prof. Batemant (Hoerlein Exh. 20):

FINAL PLEA LOERLEIN

"I esteem and admire in Prof. Loerlein the leader - who was not only a man of genius, but also one conscious of his responsibility - of that Elberfeld research institute, to which the whole world will eternally be indebted for the development of beneficent and invaluable drugs for the good of suffering humanity."

Can you believe that such a person would ever stand for it that tests with Pharmaceuticals from his plant would be conducted under circumstances and by methods which would have to be designated as doubtful from ethical and scientific view points?

In full consciousness of my responsibility as a defense counsel, who endeavours to be a servant of the law and a helper to the Court, I ask the High Tribunal, in accordance with the unequivocal result of the evidence taken,

to acquit

the defendant, Professor LOERLEIN.

- 2 - End -

Final Plan Hoecklein

ON CERTIFICATE OF TRANSLATION

We, Adolph Luthaus, Fred Salomon, Joseph E. Goesser and Robert Hoffmann hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of the Final Plan Hoecklein.

Adolf Luthaus
E 398010

Fred Salomon
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Joseph E. Goesser
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Robert Hoffmann
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" a n d "

Finch Peak, Illinois (Euler)

Case 6
Defense

Final Plea

of

Attorney-at-law Dr. Herbert FATH
before the American Military Tribunal No. VI
in case VI

Karl FRICCH et al.

on behalf of

THE DEFENSE

Nuremberg, June 1948.

ring



Mr. President, Your Honors:

During the 19th century the science of law in Europe was ruled by the ideas of legal positivism. This ideology pertinent to our special science, to which we have devoted our inclinations and our profession, has maintained its influence up to our days. It is not a mere chance that at a time, during which in the political field the ideas of nationalism expanded to its most extreme form in the states ruled by authoritarian governments, legal positivism too ruled and blossomed. The followers of this legal theory still believe, even today, that the order of law can exist only because it is backed by the power of the State. They deny any metaphysical basis to law and, as its only source, they recognize solely the positive statutes of the State. The followers of legal positivism believe to be able to refer to the experiences gained by international conventions, as this proved again and again that the law is being used by those who have pressed the power into their hands for selfish aims. They refer to the fact that incredibly weak nations call upon the law without success, because they are lacking the power to carry through their justified claims. Therefore, if politicians who represented the authoritarian form of a State concluded from these experiences that power was the prerequisite of law as such and that its value was superior to law, and that thus the State was the only source of law, then this ridiculous philosophy was only the more consequent expression for the complete disregard of the metaphysical basis of law, which has to find its last and deepest root in the law of Divine Law or the law of Nature or whatever name you want to give it.

Only the shock which was the result of the terrible experiences of two world wars was able to revive the discussion in legal circles which leads us back to the source of our legal thought.

I am fully aware of the dangers which a renunciation of legal positivism could bring to the safety of earthly States. Nobody will think of denying the necessity of a firmly established legal order and the existence of legal norms. Otherwise the position of the judge would be undermined in the modern life of a State. If one, however, proclaims the renunciation of legal positivism in a country which for centuries - in the field of International law as well as during recent times under National Socialism - was forced to gain the experience that Right was superior to Might, one should not be surprised if the industrial trials in Nuremberg, which are conducted by the judges of a victorious nation, are being watched with special interest and critical awareness by the German people. Thus I believe to be able to characterize it as an unique opportunity that has, in this realm of our practical science, from her origins, been met, having but one desire, viz. to approach the noble aim of human justice as closely as possible.

Final Plea FLORENCE

I say that this is a unique opportunity to return to the German people the faith in law and thereby to erect the strongest bastions of democracy. Justice set fundamental requirements, a world in which the Holy Father Pope Pius XII, in his encyclical "With Burning Anxiety" encountered National Socialism. A sentence, which today more than ever renews its value in International Law and which, Your Honors, may be your guide for your finding of the sentence.

I believe that the case which is presented for your judgment here, and in which 23 leading industrialists of the greatest European chemical combine are put in the dock, offers a special occasion for your most careful examination. The interest of an entire world is being turned to the final result of this trial, and it will require all of your wisdom, your knowledge, your skill and your ability to understand time and circumstances of the defendant's life, in order to find a just sentence which will contribute to the aim which I considered as desirable, viz. the reestablishment of Justice.

In my opinion, Your Honors, this task has surely not been made easy for you. For several months, the prosecution submitted a great number of documents to you, of which it asserted that these documents have some positive value for the defense in this case. It desired its admitting of evidence with a speech, with which it wanted to show you the evidence just as it looked at it and as it desired that the Tribunal should value the material of the trial.

However, if one today examines the result of the submitting of evidence and if, in addition, one recalls the Opening Speech of General TAYLOR, the disproportion between the opinion of the prosecution, which is being expressed in this speech and also in the indictment, and the actual facts is more than evident. When the trial started, a surprised and shocked audience told that the "Red Party" considered the I.C. to be one of its major government's organizations" (sect. 58 of the indictment). Furthermore, we read the assertion in the indictment that "the Press Office of the I.C. in America started in 1953 to distribute antisemitic propaganda and publications everywhere in the United States" (cf. prosecution sect. 61). In sect. 62 of the indictment we find the sentence that values amounting to millions, in the form of books and publications which glorified the master race and the Nazi state, were sent abroad by the I.C. for distribution. There are assertions which are only crude as described and for which the prosecution could not produce any proof. To understand the certain nature of the assertion on the side of the prosecution; however, one should be somewhat more careful, even in our times, when asserting that millions to the value of millions allegedly have been sent abroad for propaganda purposes. It transcends the limits of dissemination and not to a very large measure, if one has had to hear, in the Opening Statement of the Prosecution, expressions like the following:

Final Film FOOTAGE

"These men were not stopped at anything. They were the officials who made the 'hypothesis' of 'Main Kampf' come true." (German transcript p. 47).

"These men wanted to save the world, and they were ready to shatter it if they could not succeed." (German transcript p. 115).

From the transcription started, it did not appear from asserting that the crimes of the I.G. according to count II of the indictment, referred also to Germany and Yugoslavia, and the I.G. allegedly had refused and looted. I am afraid whether the I.G. had, in the course of this trial, anything of Germany or Yugoslavia? I am afraid from discussing the events of history, which are only well known dressings. I refer to them in order to show from these facts of life, which I could not fully set out, to show with the transcription must have been used in order to substitute material and facts in important points by statistics. Thus in my own mind that the transcription, in its final statement, not without further facts concerning the result of evidence, will probably report its results and conclusions. For these reasons, I consider it to be one of the tasks of the defense, to discuss in a disinterested way, with you, Your Honors, as far as it concerns my client Dr. JAGGER, both legally and factually, the results achieved up to now by the various facts.

Final Piece HUGER

Let us now turn to the person of my client. Now, Your Honors, were able to watch Mr. HUGER in the witness stand and you have gained a certain impression of his personality. Mr. HUGER, who, while still young, occupied already a leading position within the I.G. is doubtless a personality of ^{a special type} ~~high caliber~~ intelligence, energetic and fearless, he maintained his courage in the witness stand, and stood up to the principles which he considered to be correct in business life. This man is anything but a reserved, careful character who adapts himself to the circumstances, who has neither the talent to be an opportunist, nor a crafty and cunning spy, as the prosecution would like to see him. He carries his heart on his sleeve, and we do not offend him if we mention that he served the interests of the public in order that to defend his ideas. His most important features are activity, energy and optimism. Thus, already prior to 1933, during a period of the most severe economic crisis, we saw him as a member of the circle of economists around ROBERTSON, the then German Reich Chancellor, a circle which had accepted the task to support the economic policy of HITLER.

After National Socialism had taken over power and its rule had become a fact, he became a member of the circle of German leaders, the so-called F circle, which had been founded by GUTH, who later became Minister of Economy, and which was to advise the Ministry of Propaganda in economic questions which concerned foreign countries. I have showed and proved by various documents that in this F circle, which existed but a short time, Mr. HUGER submitted for discussion the measures of National Socialism and was not afraid, even in the presence of GOEBBELS, to express ~~strong~~ criticism.

is simply in BREWSTER's time, here too, in the 8 circle, the great mistake for the German Export trade caused him to employ his experience and knowledge in a suitable place in favor of the German Export trade. Just as for every German man, regardless of the position he occupied, my client too was confronted by the problem to deny his collaboration to the new German National Socialist government or to put it at its disposal. To have to call it a historical lie if the prosecution reports that every clear-thinking German in Germany knew or should have known, already in 1933, that National Socialism would proceed on the path on which it later proceeded. If this report of the prosecution were correct, as in Germany would not know any intelligent man abroad, its leaders and politicians would not have had the even a faintest of the things to come. Their guilt would be no one to question, because they lived in a free world with free exchange of ideas and the possibility to emigration. Dr. BREWSTER discussed these questions in 1933, and his friends in Berlin, Dr. KREMER, promised to him to show death. My client's answer was that destructive criticism could not be exercised successfully from the outside and that it would be much more efficient to emigrate, then to remain outside and to look, half conscious and half afraid, at the things which were in the making. In this manner he solved the problem for his future, and nobody will have the audacity to reproach him on account of this decision. It is it seems very advisable to have submitted criticism to the National Socialist rulers, and to have submitted to Hitler a report on a trip, like the East Asia report, reporting out to him, by not mentioning, the most important points for the German Export trade, then to remain and let things run as they pleased.

Final Plea JONER

That this plea is recommended to Dr. JONER's honest conviction, is shown by the fact that at the same time he put his aid and support at the disposal of the prosecution of the Nazi regime to a far-reaching extent. In this connection I have submitted a great number of documents to the Tribunal, Your Honors, the prosecution did show you not only by intent, the extent of a terrorist reign, which developed especially during the last years of National Socialism, but also on the readiness to make sacrifices and required for assisting the social and political persecutions, to protect their families and to give them a position enabling them to make their living, so that finally the ~~office~~ ^{office} of Berlin No 7 became a home for social and political persecutions. The course of a confession was necessary to support the Christian churches in Germany, which were persecuted by National Socialism. The Swedish priest, Birger Wahl, insisted on a similar position during this trial, in order to aid my client by admitted and admitted of intention for Dr. JONER's former position. Thus the letter of a church is shown when the prosecution believes to be able to accuse of my client and crimes against humanity. Your Honors, when discussing the crimes of the indictment, I will show you the incrimination of this thesis of the prosecution, inasmuch as I did not discuss it fully by my Counsel Wahl. Prior to my turning to the witnesses, however, it is necessary to show you in a few words the importance of the T.O. concentration Berlin No 7 and the position which my client held in this concentration.

First, it is a striking fact that the Berlin office of which Dr. HIGHER was in charge, did not have any name from which conclusions could be drawn as to the importance and tasks of this office. Without doubt, the name Berlin 177 is a solution started for want of a better one. This shows already to a certain degree the small position which this office occupied within the entire machine. From many trustworthy documents and statements of witnesses in this trial, we have learned that decentralization was an important symptom of the organization and working method of the machine. In spite of that, it proved necessary, in the course of the wars, to create an office for certain fields of work in which questions which were of interest to the entire machine were dealt with. Thus, attaching them to the already existing most important and highest department of the Central Financial Administration, of which Herr General SCHMIDT was in charge, a number of departments was created, which were concentrated under the local name Berlin 177, and which were subordinated to my client. This development resulted of course from the activities of the German Economy, to which I will refer later in detail, and which found its most significant expression in the crisis of World Economy which started in 1929, the collapse of various banks and the devaluation of currencies. It was the intention of my client, by developing a department of ~~political~~ economy, of carrying out in time investigations of the situation of World Economy and its currency problems, as well as of its individual national economies, an institution for which the American National Industrial Conference Board served as a model and which gained a great scientific reputation under my client's leadership.

Final Film IUMER

It was only natural that in view of the tasks which this Institute had to master and of the economic interests of the combine in South Eastern Europe, a branch office of the ~~political~~ economy department was established later on in Vienna. In the second half of 1934, the ~~two~~ was incorporated into the framework of the organization Berlin N° 7. The purpose of this department was to avoid contradictions when representing I.G. business interests at the authorities, and in the first place this department has to handle requests in the field of trade policy, export problems, customs duties and duties. Thus the possibility should be sought that authorities "lay" out individual offices of the combine and assist the others. Further, we would like to mention the office of the "Commissaire" Committee, which had to render the conclusions of this Committee and to evaluate results, and which sends the reports of the I.G. liaison officials, no institution to be made no later on. It should be stated that such a combine had its own Press Office, later on called Information Office, which secured such publications at home and abroad, as were of interest to I.G. business, and which prepared questions of newsgroups at home and abroad. In addition, however, there were a few more offices with specialized controlling functions, among them the "Vermittlungsbüro", which was not run by my client and which were considerably bigger than the entire organization Berlin N° 7. The tasks of this organization show the position held by my client within the entire combine.

Final File NUMBER

The prosecution has tried to stress this position more than warranted by the facts as to position of my client & position within the Gestapo which in fact he never held. The witness Dr. THOMAS, my client's lawyer, rightly emphasized that outside of the I.G., Dr. FUCHS was much more known than many of his colleagues, but that he is not to be kept, within the I.G., to the degree of man with whom the final decisions rest. His interest in political economy problems resulted in many trips. He was criticized by the Gestapo, though it was the economic interests of the I.G. which had to be considered, and by a personal knowledge of the country and its people. This resulted in the absence of Dr. FUCHS from Berlin for, more often than not, in the witness box, Dr. FUCHS would say that he took trips, and his coworkers confirmed in various affidavits that he was not to be kept to the knowledge of world economy connections which would be a great help. He was so active that he did not take care of his duties, and was unable to work for 1 1/2 years, from the end of 1936 until the middle of 1940, from the direction of his Berlin 177 office. It appears to me that these facts are of material significance for my client, also in connection with the collection and reliability of the Gestapo, as well as by the prosecution.

Thus I come now to the accusation of the prosecution which is particularly directed against my client, and which has been formulated under

Count 1

"Planning, preparation and execution of a series of assassinations, viz. the assertion that Dr. Max FUCHS has been active in Nazi propaganda and espionage abroad, through the national or international Berlin 177.

Final Plea TUCKER

Prior to answering the assertions of the prosecution, I believe it will be as well to discuss the legal prerequisites of the accusations. This will show quite clearly that the prosecution was not able to adduce evidence for the decisive legal and factual prerequisites, as required by article 2 of Control Council Law No. 10, as well as by the legal issues of the judgment of the International Military Tribunal. Indeed, the prosecution has not even tried to adduce such evidence.

Regardless of that, General TUCKER has, in my opinion, correctly recognized in the main the legal problem in his Opening Speech to this trial by stating:

"The only question which is subject to decision under Count I is the extent to which the defendants knew or participated in the preparation and starting of invasions and aggressive wars which were planned and which were actually carried out."

The International Military Tribunal has to examine the same problem and formulated this fact more precisely in its sentence as follows:

"Hitler alone was unable to conduct an aggressive war. He required the collaboration of statesmen, military leaders, diplomats and businessmen. If these persons knew his aims and still rendered their co-operation that they joined so they participated in the plans created by him. (My underscoring)"

Furthermore, the IMT judgment clearly expressed that no general vague knowledge or assumptions could be the basis for a penal judgment, but that it is necessary that the knowledge of a concrete plan for the waging of war be present and that, finally, the decision to wage war is not separated by too long a period from the actual carrying-out.

Final plea ROSEN

Accordingly, the judgment of the International Military Tribunal considered such prerequisites as having been fulfilled only in the participation in certain conferences conducted by Hitler, during which he made public his plans, or in case of a positive knowledge of the subject of these conferences. This correct legal opinion had the result that leading personalities of the Third Reich, such as KEILMEIER, STERN, STROHMAYER, STROHMAYER, STROHMAYER and STROHMAYER were acquitted of the charge of a crime against peace, quite aside from the 3 defendants of the PT trial who were acquitted on all counts. I believe that I can be satisfied with these fundamental facts established by the International Military Tribunal, which give a clear picture of the prerequisites required for the proof of the guilt in connection with count I of the indictment. It is a known fact that Control Council Law No. 10 is only an implementation law of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945, which on their parts were the basis for the charter of the International Military Tribunal and thus of its administration of justice. Therefore, article 2 of Control Council Law No. 10 can be interpreted only in the very same way as this was done by the International Military Tribunal. On account of our distribution of work, my colleagues dealt with this problem more closely, and I therefore may refer to their statements. Thus I can limit myself to draw the conclusion on behalf of my client, from this administration of justice of the International Military Tribunal.

CERTIFICATE OF TRANSLATION

24 May 1948

I, S.L. Hachur, of ETO 20062, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of document Final Page THREE.

S.L. Hachur

ETO 20062.

~~Final Page~~

In view of these expositions I am ~~not~~ ^{not} ~~sure~~ ^{sure} if the prosecution produce evidence, that my client knew of ~~conspiracy~~ ^{plans of a war} or that he participated in a ~~HITLER~~ ^{HITLER} conference, that he learned of their ~~assumptions~~ ^{plans}, was connected with the plans or otherwise made an effort to ~~stop~~ ^{stop} or ~~prevent~~ ^{prevent} such plans of aggression. The ~~assumed~~ ^{assumed} knowledge of ~~HITLER's~~ ^{HITLER's} plans of aggression was to be proved. The prosecution makes assumptions only. Nothing can be proved by assumptions. But even these assumptions are devoid of any actual basis.

Dr. ILGALA supposedly had made Nazi propaganda abroad. Thus, first, he is reproached with contacts with the known American publicity agent ~~Dr. Iva~~ ^{Dr. Iva} ~~ILGALA~~ ^{ILGALA} who advised the I.O. There was a very good reason for his commission ^{in 1934} in the United States a boycott movement had started against German export commodities which affected considerably the products of the I.O. It should be easy to understand that the I.O. did not remain passive in the face of this situation and did not tacitly look on how the credit of German export firms in the United States was being impaired and the sale of their products disturbed. If the I.O. did not oppose this boycott then it could have had immeasurable effects for the I.O. In addition to that there was the fact that the boycott movement was carried on with political arguments and was more than a competition manoeuvre of interested firms which tried to use the situation for their own good. This was a case which concerned business and I.O. did not need

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to leave anybody in doubt that it was a profit-seeking enterprise. Thus Mr. Ivy LBS was commissioned. He had been recommended to my client by Charly MITCHELL, president of the National City Bank, and Walter TADGIL, president of the Standard Oil Company of New Jersey, and had worked with great success for the publicity of the Standard Oil Company. Mr. LBS gave advice which had nothing to do with Nazi propaganda. He suggested that prominent German businessmen and politicians of international reputation should write explanatory articles in Germany; those articles were sent to a number of American businessmen and men active in public life suggested by Mr. Ivy LBS. It was Mr. LBS's condition that no usual propaganda should be made but - as he put it - fair publicity only, of which alone he expected success in the United States. In proceedings before the Committee for Un-American Activities Mr. LBS's activities for the I.G. were thoroughly investigated. Neither he nor his firm was punished nor otherwise prejudiced; which proves that his cooperation with the I.G. could not be objected to by the Americans.

The prosecution believes to perceive another point of alleged Nazi propaganda in the fact that my client caused shipments of books to America. The evidence showed what was the matter with these book shipments. These were gifts to cultural institutions, hospitals, schools, Chambers of Commerce, which Dr. ILGAR had visited during his trips, and

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sporadic shipments to the NSDAP Organisation for Germans living abroad which had asked for books from home. By making a one-sided selection, the prosecution tried to create the impression that these were mostly national-socialist publications. In my document book No. 7 I have submitted to the Court the remaining lists of books and they show that preponderantly books belonging to classic literature and bibliography were sent to America; they have nothing to do with National Socialism and its ideology. All these books were in German and were accessible to people only who knew the German language. Here the question arises is at issue whether my client by this good-will action was pursuing aims which served the preparation and planning of an aggressive war. As to that no evidence was produced by the prosecution. Besides there is in every country a considerable number of publications of foreign political ideologies; the fact that they are there does not deserve the reproach of propaganda let alone an accusation of preparing an aggressive war. In connection with that it was reserved for the prosecution to qualify the blessed activities of the Schurz Association, the president of which was Dr. Max ILGER, as an instrument of Nazi propaganda abroad. It is particularly difficult in this case to follow the deductions of the prosecution. The arrangements of the Carl Schurz Association, which was established in memory of the great German-American Carl Schurz long before national socialism, were visited by so many Americans in Germany that as a matter of fact there should not be any need to discuss further the purpose and aims of this

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^{to many good}
association. It sought for an understanding in Germany between
the American and the German nation. Their students and professors,
Your Excellency, who came by way of exchange to Germany remember
gratefully even today the reception they found at the Carl Schurz
Association; this has been proved by a movie produced on such
an occasion and now repeatedly shown at an American university.
When the meritorious ex-president HOOVER visited Germany a
festive reception was given to him at the Carl Schurz Association.
Your ambassador, His Excellency DODD, and other members of the
American Embassy in Berlin were several times guests of this
association. It would be a bad reference for all these Americans
who had the opportunity to observe the endeavors and aims of the
Carl Schurz Association if they would not have noticed that the
association, according to the allegation of the prosecution, had
been a camouflage instrument of Nazi propaganda. Our opinion in
this respect can not be shaken either by the reference of the
prosecution to the loose connection existing between the Carl
Schurz Association and the Culture Department of the German
Foreign Office, and the fact that the association got from this
source meager financial support beginning in 1936, on the occasion
of the Olympic Year. I believe that such an association which
wanted to do pioneer work for a healthy foreign policy would
have drawn the attention of any foreign ministry regardless of
where such an organization would have worked. It has to be
appreciated as a special merit of the Carl Schurz Association's
management and of my client as its president that they understood
how to keep up the old tradition of the

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association and how to prevent possible attempts of the national socialist state to gain influence on the association. In my opinion it is sufficient to refer to the many convincing and detailed documents of the defense to refute the allegation of the prosecution that the aim and purpose of this association's activities was Nazi propaganda.

I shall now consider the further allegation that my client in his capacity as chief of the I.G. Farben Office Berlin NW 7 indulged in espionage activities in Germany and abroad for the preparation and planning of an aggressive war. This allegation does not fare better than the charge of Nazi propaganda mentioned just now. According to the opinion of the prosecution espionage was about all my client did and that was done at the organization Berlin NW 7. When Dr. ILGERS went abroad and contacted leading men of economic, political and cultural life during those trips then he did it, according to the opinion of the prosecution, for the dark reason of espionage only. Your Honors, we believe that German espionage abroad never passed a particular test of competence. Much less under national socialism. Otherwise it would not be comprehensible that such basic mistakes about the circumstances abroad could exist in leading political circles in Germany. One of the worst, not to say one of the most incapable espionage agents ~~could have been~~ my client Dr. ILGERS if one wants to look at him from this point of view. Witnesses who know my client thoroughly

Final Piece ILGERS

testified that having the choice between Dr. ILGERS and any man from the street they would choose without hesitation the man from the street. As I told already when describing the personality of Dr. ILGERS, he takes always the straight path. His vivacity and the fact that he is communicative make it impossible for him to be a carrier of secrets. What he learned during his extensive journeys and the knowledge he acquired was put down in travel reports and included into the library of the ~~Research~~ Economy Department which was accessible to anybody, who was interested. The very interesting East Asia report, a publication in three volumes, was sent to many persons.

The prosecution believes even more to recognize espionage agents in the I.G. Vervandlungsanstalt. The number of mistakes, made by the prosecution especially as regards the aim and tasks of the I.G. Vervandlungsanstalt, is particularly great. This was an institution which as we have proved served exclusively business interests and was established after the pattern of great Anglo-Saxon corporations, like e.g. the Standard Oil Company of New Jersey, the National City Bank of New York and the Imperial Chemical Industries (I.C.I.), London. Emerged from the Vortragsanstalt of the Central Finance Administration, the so called "Hoff Vortragsanstalt", whose business it was to observe in a disturbed world currencies and their problems, the I.G. Vervandlungsanstalt did not come into existence until 1937 by a decision of the Commercial Committee.

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These were men from the I.G. sales departments abroad who were in the first place salesman for their I.G. products. In many cases the I.G. Verbindungsmänner were foreigners and only very few of them were men who could be called followers of national socialism. We have submitted to the Court documents which show the tasks and the activities of the I.G. Verbindungsmänner; we were also able to submit affidavits of several former I.G. Verbindungsmänner some of whom still live abroad. Each of them has rejected with indignity the accusation of espionage. The value of their reports which were supposed to be made monthly was rather varied. One limited himself to collect newspaper clippings and to make from them a report, another reported, if it seemed to him that it was important for business, occasionally also about the political situation of the country he was a guest. The prosecution underestimates the business risk which results from the I.G. export and investment of large capital e.g. in such countries which deserve special attention because of their latent dangers of revolutions. It is therefore not only natural but a downright necessity for the management of a concern with such foreign interests like those of the I.G. that the Verbindungsmänner in question reports in time about such things, too. The prosecution unjustly refers to a report of the USA Embassy in Buenos Aires dated 21 February 1944 (Exhibit 91A) in which German firms, among them also the I.G., are suspected of espionage activities. This report can never be a basis of a decision of this Court since this is an unilateral allegation of a party; this allegation was not

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examined in any ordinary proceedings in which the defendant was also heard. On the other hand we are in a position to refer to affidavits and documents which came just from the two Verbindungsgruppen in Argentina. They prove that both gentlemen had to submit themselves now after the end of the war to detailed investigation proceedings before Argentine authorities. The proceedings ended with a clear proof that they were not guilty and showed that the preferred espionage charges were untenable. Dr. HIGER never gave directives which would allow a conclusion that the I.G. Verbindungsgruppen carried on espionage activities.

Finally, there was no connection with the High Command of the Wehrmacht, Counter Intelligence Division, which would permit an assumption of cooperation in the field of espionage or would justify a criminal guilt of my client as regards the charge of preparing and planning aggressive wars. My client had no official connections either with the Chief of the Counter Intelligence at the OKW, Admiral Canaris, or with the subordinate agencies of the economic intelligence, Herren Bloch and Focke. Because of the passive attitude of members of the I.G. Vorstand, especially as to this problem, the entire Vorstand had to endure serious reproaches already in 1943 during a lecture of the chief of the division OKW Counter Intelligence, economic intelligence. At the beginning of the war the OKW had to resort to compulsory conscriptions of individual employees of the ~~political~~ economic division to get specialists of the I.G. in ~~political~~ economic problems.

We believe that the other states at war did not hesitate to use at the outbreak of the war information facilities, also if they were at the disposal of private economy. As an example, Your Honors, I have submitted to you under exhibit No. 67 an excerpt from the book by Mr. Frank A. Howard under the title "Buna Rubber", from which it results that Mr. Howard in 1938 -therefore even in peacetime- forwarded a strictly confidential report via the American Embassy in Berlin to the State Department in Washington for information of the Department of War and Navy; this report contains exact data about the production and import of fuel, lubricants, synthetic fats, rubber and fibrine in Germany. The production of the I.G. Farbenindustrie in the synthetic field is explicitly and confidentially referred to.

In connection with the preferred espionage charge I would like to enter into the case of Freiherr von Lersner who is supposed to have been an espionage agent of the I.G. in Turkey. In this case the prosecution made a special mistake. Freiherr von Lersner had been the head of the German peace delegation in Versailles. He went with the help of his friends from the I.G. as a racial persecutor to Turkey and there intensively endeavored to prevent an expansion of the war and to work for a restoration of world peace. In his affidavit Freiherr von Lersner positively emphasizes that espionage activity wrongly imputed to him was the diametrically opposite of his attempts for peace. The late President of the United States,

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Roosevelt, spoke in highest appreciation of the personal integrity of Freiherr von Lersner to the American Ambassador in Vienna and Sofia, George M. Earle even in 1944 as is shown by the affidavit.

Within the limits of this count the prosecution finally accused Dr. ILGER that he with Dr. Schnitzler and Mann

"jointly with government officials prepared export programs for the entire German industry and devised methods for the expansion of German sources of foreign currency," (cf. Count No. 49).

My client's memorandum about the promoting of German export is referred to. This charge shows a basic misunderstanding of German ~~political~~ economic needs and makes necessary, in the common interest of the I.O. defense, to submit to the Court basic explanations. I am of the opinion that it is necessary for your verdict, Your Honors, if you want to understand the business policy of the I.G. in reference to the allegations of the prosecution, to get a comprehensive view of the situation and development of the German political economy during the latest decades. For this purpose I have had made an expert opinion by the Southern German Institute for Economic Research which deals with the following topics:

Which were the causes of origin of Foreign Currency Control, the promotion of export, "Creation of Employment" measures and of aspirations for autarky in Germany during the years before and after 1933?

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This expert opinion was made by Dr. Eduard ~~HEIL~~^{HEIL} under the direction of the internationally recognized specialist Professor ~~WACHS~~^{WACHS}, former president of the Reich Statistical Office and the German Institute for Economic Research, I have enclosed this expert opinion with my closing brief and I beg the Court to direct its special attention to this opinion. The time limits of our oral pleading as requested by the Court do not allow us to present this ~~political~~ economic opinion in extenso. By presenting to you the basic ideas of this work I refute the incorrect allegations of the prosecution according to which protesting expert served to prepare an aggressive war, and the I.G., particularly my client Dr. ILGWU, could have had any decisive influence on the economic and currency policy carried out by the national socialist state.

You all will remember those pleasant times when one could travel with one's country's money, mostly hard gold cash, without being hindered by any regulations of a financial - or currency - technical kind. This was based on the fact that world economy was governed by the so called "gold mechanism" before the first world war. This mechanism was based on a voluntary division of labor within an indivisible world of countries which contributed their greatest share of economic production according to the law of comparative costs for the advantage of everybody concerned. The principle of gold mechanism consisted shortly in the following: If the demand of a country for foreign currency

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increased, e.g. by a rise of import above the foreign currency intake through export, then the ^{integral} rate of exchange ^{decreased} or - if the central bank intervened - gold flew off with a deflationary result. In both cases import became more expensive; this resulted in a recess of the internal demand for foreign commodities, i.e. import was reduced. At the same time the slump of the exchange rate or the deflationist gold losses resulted in a fall of the price of the own commodities and thus in an increase of competitiveness in comparison with foreign countries, and this automatically in an increase of export.

But this world economy could work under certain conditions only. These were in particular: An unimpaired morale as regards international law, the unconditional will of every state to live peacefully together with all the other states and to act according to the rules of the gold mechanism, the participation of all countries in this system and finally the unshakeable mutual trust that all those participating will adhere to the existing rules under any circumstances. This mechanism is severely disturbed if individual nations do not recognise fully the rules existing, till then, or if political interventions impair the purely economic process of the world political credit - and trade relations. It is disrupted if the extra-economic influences rise above the equalising power of the mechanism and if thereupon the participants do not adhere to the rules any more because of a supposed instinct of self-preservation.

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CERTIFICATE OF TRANSLATION

26 May 1948

I, Stanislaw S. FELDMAN, Civ.No. STO 1043, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Stanislaw S. FELDMAN
Civ.No. STO 1043.

This very thing happened after World War I and broke up the world's economic unity which is so advantageous to all.

The reasons for the failure of this automatic mechanism of adjustment after World War I were, in the main, the following:

1. Through the war, production and markets were changed in nearly all countries of the world.
2. Through the war and the treaties concluded after the war, creditor countries were turned into debtors, and debtor countries into creditors.
3. By commercializing the reparation debts imposed upon Germany by the Versailles treaty, the fact was veiled that these political debts, being unnatural, could not be borne by the national economy.
4. The political indebtedness of the vanquished countries of World War I resulted in a far-reaching structural crisis in the sphere of economy and social politics, throughout the world which
5. Had such a devastating effect on the world's economy that, in conjunction with a crisis of the international currency situation and the departure of several countries from the gold standard, the well-known world-wide depression of the thirties came about.

Although the United States of America had become since World War I the biggest creditor nation, they were the first country to start an autonomous economic policy, and especially

by not letting the influx of gold and foreign currency from Europe, in the post-war years, bring about an extension of credit, as would have been required automatically by the gold standard. On the contrary, the United States sterilized the afflux of gold, thus crippling one of the most vital functions of the gold currency system. The motivating reason was that a following of the mechanistic rules, which would have caused of needs an increase of imports and a decrease of exports, would have entailed highly disadvantageous consequences for American industry. Thus the United States endeavored, on the contrary, to protect at the same time by a tariff wall agriculture, production of raw materials and manufacturing industry, and to keep up a favorable trade balance, contrary to the rules. When, in the summer of 1931, the world's credit crisis started, the USA and other creditor countries tried to save what could be saved, and in a panic, called off from the debtor countries the credits extended to them, for the most part on short term. Great-Britain alone recalled 3 billions of gold currency from Germany within barely two months. By this the debtor countries, especially Germany, were thrown into a transfer crisis from which there was no way out, and this finally caused the total collapse of the world-wide credit system. In September 1931, Great-Britain was the first country to dissociate its currency from gold. In April 1933 the United States followed, and in 1934 the dollar was devaluated to 59% of its former exchange value. In September 1936, the gold block countries of the European continent followed suit, as they were also forced to devaluate. Thus in the whole world the credit policy regarding domestic economy was separated from the currency policy affecting external trade whenever it seemed to serve the national interests.

One desired to avoid the consequences of deflation, viz. curtailment of production, a slump in prices, unemployment, and their social effects on the own country, as far as possible.

In contrast to this, the German economic policy, as pursued by Brüning, stuck to the stabilizing of the Reichsmark, causing thereby a deflation and the subsequent unemployment of 6 million people, which policy, however, strictly followed the rules applied so far in international economy.

Germany played a purely passive role in the political and economic re-orientation of international relations from 1918 till after 1932. She thus had to accept a lowering of her economic strength through territorial losses (at home and her colonies), through reparation obligations (payments in money and in kind) and through the unilaterally imposed most favored nation clause. (up to 1925) By this she was turned from a creditor country, with investments abroad between 23 and 25 billion Reichsmark, into a debtor country. Even if the political reparations debt was alleviated by stages (Young and Dawes plan, Louvenne agreement) turned in part into a commercial debt and finally abolished altogether, there can be no question that her balance of trade or her interior economic structure has been definitely changed thereby. The total German indebtedness to foreign countries amounted to 26,8 billion RM. in the middle of 1930; of these, not less than 16 billion RM were short-term debts.

Germany's foreign trade structure was also very easily affected by disturbances in world trade because it was built entirely on the possibility of freely using the proceeds from foreign exchange. As a country poor in raw materials and with too small a food basis to feed her own people, Germany had to depend, already before World War I, on the importation of raw materials and food. After the world war this dependency on imports became still greater. The foreign currency for her excess overseas imports was provided by exports profits in the trade with Europe. German foreign trade thus was the base of life and not an additional source of wealth contrary to countries with a greater home supply (U.S., Russia), or supplies provided by their own currency area (colonial powers, currency blocks). The saying "export or die" applies to the German problem, which has become a crucial one.

After the outbreak of the universal economic crisis in the fall of 1929, Germany terminated her period of rationalizing, which had been financed by foreign credits, and changed over to a policy of deflation, in accordance with the rules of the clearing mechanism of world economy; at first, with a success in foreign trade, as shown by the improvement of foreign trade in the years from 1929 till 1931 (from more than 36 million RM to more than 2,672 million RM.) She had to pay, however, with an extraordinarily severe deflationary crisis in her interior economy, the following of these mechanistic rules. The production index dropped from 100.9 to 58.7 between 1929 and 1932, and unemployment increased at the same time from 1.9 million to 5.6 million people.

FINAL FLAK TOWER

Thus the crisis, getting more and more acute, dragged on till the fall of 1932. All sacrifices, however, such as mass unemployment, cuts in wages and salaries, increased taxation and other measures, proved in vain. The attempt to reach an adjustment of the trade balance by the method of a deflationary policy was bound to founder because there was, at that time, neither a willingness of the creditor countries to a policy of credit extension, corresponding to the clearing system, nor a readiness to purchase an increased amount of German goods. On the contrary, by the devaluation of currencies, a policy of protective tariffs, the extension of preferential systems (Ottawa), the licensing of imports (Australia), and the collapse of purchasing power of the countries which had been her customers, additional obstacles were placed in front of the German export. The turn-over of the German export accordingly dropped from 13,483 billions (1929) to 4,871 billions.

Although the German policy of deflation thus proved ineffective for the adjustment of the balance of payments, it did ~~not~~ have ^{any} effect ~~either~~ on the German interior political development, which soon took a dangerous direction toward a destruction of the social structure. Through the orthodox application of the deflationary policy, additional millions of workers, farmers and tradesmen, deprived of their basis for existence, as well as the intelligentsia impoverished ~~by the war~~, joined hands with the stratum of professional soldiers of World War I, ~~who~~ thrown out of their professional career, and with the middle classes which had lost their property through the inflation. Animated by the idea that they had no prospects for the future, they were a latent and easily radicalised revolutionary army.

FINAL PLEA ILLEGAL

The lack of success of the deflationary policy according to the old rules of the gold standard in a world which had already dropped those rules has thus very much contributed towards the political impotence of those to now ruling classes in politics, administration, science, banking and industry and - supported by the masses of millions of disaffected and desperate people - it has brought National Socialism to power. Make-shift counter-measures on the German side were taken at the expense of the gold and foreign currency fund at the German currency-issuing bank, whose reserves dropped from 3 billions 174 millions RM in June 1930, to 374 millions RM in June 1933. Moreover, the other foreign assets, bonds, shares, participations, real estate, also decreased by 2.6 billions. On the other hand, Germany still transferred a total of 2.8 billions RM for interests paid during the period from 1931 till 1933. In order to stop the flight of capital and the irregular recalls of credits, Germany was forced to draw up so-called "stand-still" agreements with the creditors. It must be noted that the foreign bank syndicate granted supporting credits only under the condition that the flight of capital be effectively prevented. This demand was also one of the reasons for the introduction of the obligation for previous official approval of payments abroad and for handing over all foreign currency - the first stage in Germany of government control of the holdings in foreign exchange.

In the course of 1933 and 1934, by reason of the policy of creating work, adopted in the meantime for social political reasons, the imports requirements still increased, whilst exports decreased more and more on account of the currency devaluations of the competing countries and the lessened purchasing power of the buyer countries weakened by the depression (from 13483 million RM in 1929 to 4 167 million RM in 1934).

PINAL P.D.A. ILGERS

In the summer of 1934, in spite of a stricter control of imports (the first control offices had been established in the meantime) the liability side of the trade balance increased alarmingly. For this reason the Reichsbank, on 25 June 1934, adopted the daily allotment of the requested foreign currency, according to the increasing foreign currency. This emergency measure, however, proved to be futile too.

The futility of all makeshift counter-measures led at last to the perfecting and working out of a system from the foreign exchange control measures established until then, embodied in the "New Plan" of Schacht, the Reich Minister for Economy (September 1934). He now introduced for Germany too the principle of reciprocity, instead of the principle of prices still valid up to then; he strove after a clearing of the balance of payment directly from country to country. The control was placed into the sphere of imports and exports. The guiding principles of this "New Plan" were:

1. To buy only what can be paid for,
2. To buy only from your customers,
3. To buy only what is most needed.

The subsequent allotment, as handled up to now, thus was replaced by a prior licensing, in the same manner as usual nowadays in the imports procedure of the J.B.I.A.

FINAL ILKA ILGNER

With the "New Plan", success-vainly sought for a long time - finally arrived. German imports decreased from the 1st quarter of 1935 on, whilst the exports increased from the 2nd quarter of 1935, so that the year 1935 closed again with an urgently needed exports surplus of 111 million RM. The overbalance^{exports} had also increased since the summer of 1934, those to Europe, however - on account of the re-grouping - did not reach their lowest level until 1935.

The German exporting industry could not pursue a policy of their own in view of the currency and foreign trade policy established by the state, but had to comply with the framework of general policy. This would not have been possible under a democratic regime either, much less under a totalitarian regime governing by special means of power and by reprisals. For private industry can never by itself change the basis of state policy concerning currency and economy, as shown by the example of all countries in this period.

The increase of German exports, however, was for a long time only a by-product of the other measures, which had already come into effect. In the beginning, it was thought sufficient to utilise the endeavours of foreign creditors to liquidate their blocked assets in Germany for the purpose of increasing exports. This procedure showed the tendency to develop into a means of paying off debts instead of bringing in foreign currency by increased exports, which was unbearable in view of the urgent need for imports.

PINAL PLEA ILGNER

For this reason a fundamental transformation of the export bonus system was inaugurated on 1 July 1935. Within the frame of a "self-help drive of industry and trade", each economy group, by an export contribution had to establish a fund for promotion of exports, from which fund the exporting business was paid the export bonus. The lowering of the entire price level by deflation was replaced by the lowering of the partial price level of export prices by individual export business (partial devaluation). By this method, in contrast to the devaluation of currency, the export price was lowered without causing at the same time a rise in prices for imports. Since the method of a radical devaluation of the Reichsmark in regard to the British Pound and the Dollar could not be carried because of rational estimates of the leading circles, as well as on account of ineradicable propensities of the population against an inflation, there was no other alternative except this indirect, partial devaluation, distinguishing between countries; for at this time a uniform price level no longer existed in world economy.

The disadvantage of this method was that each change in the subventions for the promotion of exports was bound to cause an insecurity in business circles and complicated calculations. Furthermore, it required a large staff in order to observe market conditions abroad. May I refer, in this connection, to the duties of the Zefi ^{and of confidence} ~~representative~~, later on I. G. liaison ~~representative~~. Mr. Gumpig, however, was connected with this method, as it would have been in opposition to the urgent interest which Germany had in the highest possible exports results.

FINAL PLER ILGER

It took a long time until Germany followed the example of the other powers in world trade, and, on her part, changed over from a deflation policy to an autarkic economic policy. The USA started their New Deal almost simultaneously with Germany. As already described, the deflation policy as carried out in an orthodox way during the years up to 1932 was unsuccessful for the German export and import economy, as the other powers were not prepared any more to apply the rules of the gold clearing system to the detriment of their domestic economies. One may not overlook the dangerous consequences of mass unemployment, decreasing profits and of a steadily worsening standard of life on interior politics. And so it happened that from this side too came the will to switch over German economic policy to the policy of procuring employment. It is indeed a universal principle that desperate and immediatist measures always follow the slogans of politicians who promise them bread and work, particularly when the economic methods applied so far have not met with any success.

Economic activity was promoted by public employment procurement measures (e.g. the construction of Reich motor highways) by the decrease of taxes which had been increased to an intolerable level during the crisis, and by tax alleviations. Favorable results could soon be observed. The industrial production index increased once more and unemployment accordingly decreased, viz. from 5 575 492 people (1932) to 2 151 039 people (1935).

FINAL PLEA FIGURE

The import requirements increased considerably after the raw material reserves had been used up in 1934 and on account of the including of millions of unemployed persons in the economic circle, while on the other hand exports became more and more difficult. Germany was unable to find the way out of the distress connected with the most urgent import requirements. Therefore it had to be attempted to decrease the import requirements by other means. The efforts to decrease the share of the import requirements in the supply of the domestic economy with raw materials and foodstuffs by increasing the production at home served this aim, they were summarized under the slogans "Autarchy", "Agricultural production struggle" and "Four Year Plan". The main problem was to increase agricultural production in those fields in which the import requirements were especially high, e.g. in the supply of fats (fat bottleneck). In the industrial field, the production of synthetic rubber (Buna), synthetic fuels and oils (by hydrating coal), of plastics and artificial wool, besides that the smelting of ore found in Germany which had but a small content of iron etc., were attempted and achieved. Naturally it would have been more economical to purchase these basic products as natural products from the old sellers in the customary quality and at more favorable conditions. This, however, was opposed by the far too small stock of foreign currency which had to be reserved for the absolutely necessary, irreplaceable import of foodstuffs and raw materials.

FINAL PLEA HIGHER

CERTIFICATE OF TRANSLATION

26 May 1948

I, Leon Ratzendorfer, Civ. No. ETO 483, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Leon Ratzendorfer
ETO 483

Final Plea HICHER

This was the problem facing my client Dr. Max HICHER, in view of the fact that the I.G. was the largest German exporting firm, a problem which is today recognized by the occupation powers of Germany and which occasions great worry to them. Your Honors, I hope that I have made clear to you the forced turn of economic development in Germany. The assumption of the prosecution that private industry was interested in these measures, is thus refuted. The furthering of export has been ordered by the government. Private industry indeed objected in the beginning very strongly to plans which represented an extremely heavy burden for the German industry, as is shown by the creation of the export fund, towards which the I.G. alone had to contribute 55 million Reichsmark yearly. The affidavit given by the official of the Reich Ministry of Economy handling these matters has proven that these plans had nothing to do with aggression, as the great majority of German exports did not consist of goods for armament or raw material essential for war production, but in food and raw materials for the requirements of the civilian population. The German exports promotion, therefore, did not help in any way to prepare an aggressive war.

Your Honors, as I am able to prove in my education of evidence, my client was working only for the peaceful development of Germany's relation to world economy. He based his ideas upon the assumption that not only an exact personal knowledge of the economic conditions of other countries was necessary for the I.G. exports and thus for Germany too,

Panel Five HUGHER

but he also believed that it was possible to obtain a better understanding for the economic difficulties which we have to face through a close contact with economy circles abroad. For this purpose he used the opportunity offered by the "Wieler Wochen", to organize conferences, which facilitated discussions between leading businessmen of foreign countries and of the German industrial circles. The realization of this basic thought was also the purpose of the trip through the homeland (Heimatsfahrt), of the Automobile Club of Germany, which took place already before 1933, following a suggestion by my client, and later the so-called "Industriarückfahrten". Both events, in which industrial circles from abroad participated as guests, took place under the presidency of the Duke Adolf Friedrich of MECKLENBURG, whom you have heard here as a witness. Dr. HUGHER used every possible opportunity to work for a closer contact with the business friends from abroad and thus to promote the understanding between the nations, which is administered also by the smaller events organized by him, the so-called business party in the "Wieler". The prosecution considers the events organized on the occasion of the "Wieler Wochen" only as a cover for espionage activities.

Your Honors, I can only answer this by pointing to the many letters of acknowledgment and enthusiastic remarks of the foreign visitors, which I have submitted. I believe I do not have to say any more about this subject. The economic policy of my client, which he followed before and during the war with regard to the countries which were mainly a victim, was based on the same leading thought. His basic principle was

the sound idea that the urgent contact with these countries must necessarily be promoted, if an industrialization of these undeveloped countries succeeded in raising the standard of life of their peoples, and thus enabled them to buy German export goods. He was, in this connection, of the opinion that, in the case of new business organizations, the partner belonging to the nation where it was founded, had to represent the authority of the capital, in order to safeguard his interests and the interests of his government in the planned project, while the I.G. was, as a partner, the technical director. Dr. HUGER also steadily maintained this viewpoint during the war, with regard to the countries in the South-East of Europe; he safeguarded their interests with the National Socialist government, by requesting that Germany pay its debts to the Balkan countries, before it could export further materials from them. The National Socialist Economy Administration reproached him for this attitude. These facts etc., in my opinion, are to be taken into consideration when judging the statements of the prosecution regarding spoliation and looting (Count 2 of the indictment), a charge which is contradicted by the attitude of my client in matters of economy, shown through many public conferences.

Before concluding the discussion of Count 1 of the indictment, I have to emphasize that my client was a peace-loving man, which is proven by a great number of documents and by testimony of witnesses. The outbreak of the war prevented to him the construction of his plans for which

He had worked for many years, and of the work of his lifetime, which had economic cooperation as its main purpose, reliable witnesses describe him as a man of such optimism that shortly before the outbreak of the war he did not believe that this would happen, he did not even believe that war had broken out, as stated by the witness Dr. WITKOP. This man, who has proven his faith in peace and his desire for the maintenance of peace through his work, can never be guilty in the sense of Count 1 of the indictment.

To Count 2 of the indictment:

The prosecution has, furthermore, charged my client with the participation in industrial transactions in territories occupied by Germany, which it called "expropriation and looting". As I have already stated in my statement of defense, I shall undertake to discuss the Torrey case as a whole. Your Honors will find a detailed statement in my closing brief. Here I just want to point out to Your Honors the main points, taking into consideration the part which my client had in the carrying-out of this business. I refer to the statements regarding legal principles by my colleague Dr. SIEGEL, dealing with the problem "expropriation and looting", in accordance with the necessary division of work among the defense counsels. Apart from this, Your Honors will recognize that in the case of Torrey there exists no special legal problem, after the facts in the case have been clarified.

The result of the collection of evidence does, in my opinion, leave no doubt that this was a matter which had been carried out by the I.G. in a correct manner, in accordance with the usual practice in private industry. We have to consider separately two occurrences:

The first is the founding and the organization of the firm Carlisle & Co. in Oslo, under participation of the Norsk Hydro, the I.G. and a company controlled by the German Reich. The prosecution has stated that it was the aim of the Nazi government and of the I.G. to exploit the Norwegian industry for the German war production and the colonization of the Norwegian country. In order to represent this thesis as more plausible, the I.G. is identified with the Nazi government and its aims and methods, to the life's matters.

The facts show us a different picture. It was not the I.G. who was responsible for the founding of the firm Carlisle & Co., but the former Director General of Norsk Hydro, Dr. J. H. N., who went to Berlin in order to request the assistance of the I.G., because the Plenipotentiary of the Reich Air Ministry for the Light Metal Industry, Dr. KOFFMEIER, had instructed his country to construct a light metal installation. Friendly relations existed since many years between the I.G. and the Norsk Hydro. The I.G. participated to a considerable extent in the Norsk Hydro, and Norsk Hydro had already in former years expressed the intention to construct

In Norway a munition installation with the assistance of the I.G. as the I.G. had received a government order for the construction of a new munition installation in Norway, the negotiations between the I.G. and the Norsk Hydro resulted in the decision to construct jointly a corresponding installation in Norway. Both contracting partners believed to act as private partners and thus to have eliminated interference by the government. The Air Ministry requested, however, in the last minute, through WEINBERG, the participation of the German Reich through a company belonging to the Reich Air Ministry. No action was never actually carried out. The installations were destroyed by an allied air raid shortly before their completion. On the other hand, almost the entire machinery and the required apparatus were imported to Norway from Germany.

The prosecution could not give the slightest evidence proving that the I.G. used direct or indirect pressure in order to influence the Norsk Hydro to conclude the contracts. The former friendly relations between the I.G. and the Norsk Hydro continued during the war, as was confirmed by the Senior Director-General WEINBERG. It can not be easily understood which of these facts can be considered a spoliation. If the prosecution believes that its thesis may be furthered by the general idea that the construction of this installation was, allegedly, detrimental to the economic structure or economic order of the country, this argument does certainly by no means apply to the case of Norway. The fact that such industrial installations, as were to be constructed by the Norsk Hydro, fit very well into the economic structure of Norway, is proven by the completion of the installations of the Lattatell, which is today carried out jointly by the Norsk Hydro and the Norwegian government.

Final Plan IUGER

Operations have partly already started in these installations, and thus the project has been carried out which, as stated before, had been planned by the Norsk Hydro, already long before the war.

I shall now discuss the second problem under consideration, namely the problem of the financing of this newly-founded firm Norsk Lattestell. Norsk Lattestell was founded with a share capital of 45 million N. Kr. ^{The 3 partners had over 12 million N. Kr. each.} Capital requirements which exceeded this amount were procured through credits by the three shareholders. The only problem considered here is the manner in which the Norsk Hydro procured its share of the required capital. The management of the Norsk Hydro decided on an increase in capital. The prosecution claims that in this connection the rights of the French shareholders participating in the Norsk Hydro had not been sufficiently safeguarded. The Defense could give undeniable evidence that this reaction is not correct. The French majority of the styre (Board of Directors) agreed to the founding of the Norsk Lattestell, as well as to the capital increase of the Norsk Hydro. This is clearly proven through pertinent documents submitted by the Defense, namely IUGER Document 261, Exhibit 264, and IUGER Document 260, Exhibit 263. These two documents were until 3 May 1948 in the hands of the prosecution. In spite of the fact that it results from these documents that the Frenchman, knowing all circumstances involved, consented to this entire

transaction, the prosecution, which was for months in the possession of these documents, still maintained its illogical viewpoint.

It was a most coincidence that the defense was able to find these documents in the last hour, in the document room of the prosecution 316. I refer, furthermore, to the telegram of the Norsk Hydro, document 262, Exhibit 761, which was also received only at the end of the evidence proceedings. According to this telegram, it results from the records of the stock meeting of 19 June, that all members, therefore also the French members, agreed to the capital increase of the Norsk Hydro. These records are written and signed by Dr. JENSEN. The French shareholders of the Norsk Hydro were, at the general meetings of the company, always represented by the Banque de Paris, whose directors were simultaneously the French stockholders of the Norsk Hydro. No legal importance can, therefore, be given to the fact that these French holders of the stock and simultaneous representatives of the French shareholders were not personally present at the general meeting of 30 June 1941 in Norway, which took place eleven days later, after they already had given their consent on 19 June 1941, as stated in the records. In addition, the Banque de Paris repeatedly announced to the French public the fact of the capital increase, before the general meeting took place. The prosecution could, in this case too, give no evidence proving the fact that pressure had been exercised on the French, ^{by the Germans} in order to obtain their consent to the capital increase. It is characteristic that the prosecution could not obtain any statement regarding such alleged pressure.

from any of the former living ~~parties~~ in these negotiations who are still living, namely the Norwegian Director-General ~~WILSON~~ and Sir ~~James~~ ~~WILSON~~, and the Frenchman ~~WILSON~~, ~~LOREN~~ or ~~COUTURE~~. I could, on the other hand, submit evidence to Your Honors, from which the irretrievable conduct of the I.G. in this transaction results.

The representative of the French shareholders, the Banque de Paris, knew, of course, as well as any other banking firm, that there existed no clearing agreement at that time between France and Norway. A transfer of capital for the exercise of the subscription privileges by the French shareholders was therefore not possible; the I.G. had no influence on this circumstance. The president of the Norsk Byg, the Swedish banker ~~WILSON~~, of international renown, informed the Banque de Paris that his bank, the Enskilda Bank in Stockholm, was ready to purchase the subscription privileges of the Frenchman for a certain sum, and also ~~propose~~ a rate for these subscription rights. ~~WILSON~~ intervened upon a suggestion by Dr. INCHER, who requested that the rate be fixed by a member of a neutral nation. Thus it was prevented that the subscription rights be forfeited without any compensation. It is therefore impossible that French shareholders were deprived of their subscription right following a tricky plan, as stated by the prosecution.

With regard to the participation of my client, it became obvious that Dr. INCHER intervened only after the basic problems

concerning the founding of the Nordisk Jernmetall had already been clarified. The reason for his participation was the necessity to finance the new installations in a manner acceptable to all partners. My client never belonged to the styre of Norsk Hydro. He placed liberally at the disposal of the management of the Norsk Hydro in Norway, as well as of the Banque de Paris the good offices of the I.C., a fact which results from many documents. There exists not the slightest evidence to the effect that my client did not act in a fair manner in any case.

I believe that the defense could clarify the case of the so-called solicitation of Norway, and demonstrate that it was actually a business transaction, which was carried out by the I.C. in a correct manner. The defense would have succeeded in proving this fact even more clearly if it had been able to make a trip to Norway, as the prosecution had done, in order to examine the existing documents on the spot and to interrogate witnesses. In spite of the assistance granted by Your Honors to the defense in this connection, I must point to the unequal means at disposal of prosecution and defense, and must invoke in this case vis major preventing the collection of evidence.

I am, however, convinced, that the evidence submitted is sufficient in order to establish the fact that my client is not guilty with regard to this count of the indictment.

The same is true regarding any connection established by the prosecution between my client and an alleged looting by the I.G. in Poland and Russia. The statements made by the prosecution concerning this matter are only touching the outside of the events considered by the prosecution as looting; it is therefore not necessary for my client to discuss them any further. Evidence has refuted the assertions of the prosecution. As to the legal position, it is sufficient to point out that all forms of criminal participation require the knowledge of those elements which constitute the offense. The prosecution has not even attempted to give this evidence although the burden of the proof in this matter is incumbent to the prosecution.

Paragraph 3 of the indictment:

I may be brief, regarding this subject, as my client has, in his statement of circumstances, dealt with the employment of forced labor, concentration camp inmates and Jews; he never owned a factory and no special evidence was, therefore, submitted against him by the prosecution in this regard. In spite of this, the prosecution believes, however, to be able to charge my client on this count with the knowledge of employment of forced labor, concentration camp inmates and with knowledge of their ill-treatment, which the prosecution considers as part of the general responsibility of the Vorstands. I refer to the basic statements of my colleagues as to the problem of collective responsibility. Dr. HUGER's special activity on behalf of the I.G., as well as the decentralization in the business management of the I.G.,

which was already described as necessary and extensive, show very clearly that no convincing argument can refute his testimony in the witness stand. As a businessman, he did not handle these matters. The concentration Berlin 7 was merely an office. He had no more knowledge whether foreign workers were employed in Germany and by the I.G. than any other German at that time. His frequent absence on trips also serves to explain the fact that my client did not learn of the existence of the concentration camp inmates by the I.G. and had no clear conception of the situation.

Dr. JACOB had an opportunity to show his attitude towards the foreign workers when his wife forced him to transfer his plant from Berlin to Pank and to employ several foreign workers and Poles. I believe I may state without any reservation that he acted like a friend for these people who were mostly refugee families. He acted in an exemplary manner for their material well-being. He instituted every possible social care which conditions permitted. He founded a Kindergarten, cared for the education of children, for religious services, the showing of movies, he organized musical soirees and made untiring efforts on behalf of the foreign workers and Poles. He followed thereby a tradition of the I.G., which was known in entire Germany for the perfection of its social care. As to count 3 of the indictment too, no evidence has been adduced by the prosecution which would prove the guilt of my client.

Your Honors, I am now at the end of my statements. May I say that the defense did not ~~omit its best evidence~~ ^{omit its best evidence}. We have submitted adequate rebuttal evidence to Your Honors, even when the statements of the prosecution were not only irrelevant, but also erroneous and misleading, if it seemed necessary in order to clarify the facts of the case or to facilitate the understanding of the Court. Dr. HUGER was, in the course of these proceedings, given the opportunity to render a detailed account of his activity as a member of the Vorstand of the I.G. Farbenindustrie Aktien-Gesellschaft. We believe to have completely destroyed the net which in revenge and prejudice have spread over my client, and in which the prosecution has caught itself now, as it appears to us. I am convinced that Your Honors will render a fair judgment in the last tradition of democratic justice. I therefore propose that my client Dr. HUGER be acquitted.

CERTIFICATE OF TRANSLATION

25 May 1948

I, Helene Lelland NO B 398038, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of document Final Plot INGER.

Helene Lelland

NO B 398038.

From Pease State (Amherst)

Case 6
Defense

Final Plea

For the Defendant Friedrich J & E H W 3

held

before the Military Tribunal No. VI in New York

in June 1948

by Dr. Gene Irby
Attorney-at-law.

Irby

8



Mr. President, Dear Seniors,

Count Is Preparation of War of Aggression.

I. The Personality of Joehne.

The profession shapes the man. Joehne is the type of motor engineering-technician whom the constant occupation with materials has trained into an absolutely objective, incorruptible observer and expert, to whom the passion-form confusion and exaggeration of the Third Reich were utterly repugnant.

Joehne obtained his knowledge and experience during a long career in chemical plants. The position of an engineer is different there compared with other industrial branches. In the regular factories, the engineering technician is the manager of the plant, who utilizes his own inventions and those of his particular field and thereby determines the kind of production. In contrast with this, in the chemical plants it is the chemists who are the managers of the plant and who determine the direction and the way. The main task of the engineer in the chemical plant consists in building and maintaining the plants and equipment for the products planned by the chemists. He furthermore cares for the so-called utilities, thus, for instance, the equipment for generating electricity and steam, the transport installations, etc.

In the I.G., therefore, it was the chemist who decided what had to be manufactured and what production plants, for instance, for sulphuric acid, chlorine, synthetics, etc., were to be built. Concerning these production installations, therefore, the engineer was consulted only on the problem of how the building should be done. With reference to the utilities, he had to state, in addition to the foregoing, what utilities were needed and how these were to be built.

a) Activity within the I.C.

These established facts show the limits which controlled the activity of Jensen within the I.C.

Jensen was since 1931 chairman of the Tekn (Engineering Committee), since about 1934 a member of the Tek (Technical Committee) and in 1934 became a deputy member and in 1938 a full member of the Foretand.

The Tek had until 1933 a considerable influence in the field of investments. As was shown by the evidence, however, the Tek lost this influence after 1933, since the State interfered to an ever increasing degree with the free economy. During the war, practically all investments were those ordered by the State, as others were not permitted. Quite often the Tek was informed of new installations only after they had been already started or even after they were already functioning.

One of the 30 committees of the Tek was the Teko, a kind of study group, which consisted of the 7 leading engineers of the Smarts and larger plants. Jensen, as the chairman of the Teko, was merely "primus inter pares" and not by any means the superior of the other engineers. The Teko, too, had to define their attitude to credits which had been asked for new installations, but only from the technical engineering standpoint. Consequently if new production installations were planned, they did not define their attitude as to whether the plant was to be built. The examination of this problem was reserved for other commissions.

This formal of opinion concerning requests for credits, so often mentioned by the Prosecution, was by no means the main activity of the Teko. As the central body of the engineers within the I.C., it had to care for a suitable organization of the entire engineering sector, to make the technological experience of one plant available to the others and to keep up the training of the young generation of engineers and

skilled workers. Above all, it had to push ahead the research activities in the field of engineering. This was a task which Jacobs as the chairman of the Toko pursued with great energy. In the Research Department for Engineering and Technology in Bochum, the newest developments in the field of physics were obtained, evaluated and turned to use in industry.

The defendant Jacobs, as the chairman of the Toko, was particularly active in these great and rarely engineering-technological problems of research and the training of the other I.G. engineers for the benefit of the entire organization.

b) Jacobs' relations to the Party.

Jacobs gave all he had to these considerable tasks in the field of engineering and technology. He had neither the time nor the inclination to occupy himself with other matters, especially not with the politics of the Third Reich.

I have demonstrated his personal ways of thinking by numerous affidavits. Until 1933 he belonged to the German People's Party (Deutscher Volkspartei), to what party which, under the leadership of Stresemann, for many years Minister of Foreign Affairs, strove for mutual understanding with the Western powers and also achieved it. After the dissolution of this party, he remained loyal to a circle of former members of the Volkspartei who continued to meet in secret.

Upon the direct demand of the Goebbels, Jacobs joined the Party in 1938. At that time, he faced the choice of either resigning and handing over his position to somebody else, who would have been more accommodating to the wishes of the Party, or to remain at his post and thereby help the plant and the men who had been entrusted to him. Every sensible deliberation must have induced him to choose the second alternative.

Final Plan Jackson

His personal attitude did not change in the least through this final step. Jackson did not disguise his conviction and expressed his opinions "with great personal courage", as is stated in one of the numerous affidavits. He helped political persecutions. His personal policy was objective and just, and he resisted any political influence exercised by the Party. Numerous witnesses testified that this attitude was known not only in the works, but also in the Party, which considered him "politically unreliable", to use the then customary official term. This became apparent on many occasions, particularly on Jackson's 60th birthday, when it was intended to bestow upon him the honorary degree of Doctor for his merits in the field of chemical engineering, but this was thwarted by the objections of the Party. After 1945, Jackson was classified as "exonerated" (entlastet) by the Denazification Board and placed in Group V. He received from the Military Government the decision: "may retain present position."

- a) Jackson's abilities as technician and industrialist were the cause of his holding many honorary public offices. He already held most of these offices prior to 1933. He was, for instance, a leading official in associations for the provision of medicines and in other technical corporations. After 1933, the Industry often approached him for his assistance ⁱⁿ preventing the endangering of free enterprise by the appointment of Nazi-friendly elements. Jackson never refused his help on these occasions. So he became Chief of the Industrial Department of the then Hesse Chamber of Commerce and Industry and also of the Occupational Representation of the Economy. He received this appointment on the proposal of the Industry, which relied on him particularly for protection against Party interference. It was

Final Phase - Jackson

precisely his position as Chief of the Industrial Department that enabled him to exercise his influence and so prevent all too great damage being done. He pointed out, for instance, to the industrialists the necessity of decent and exemplary treatment of foreign labor. He also succeeded in winning the fight concerning the apprenticeship training of youth and carried through his plan that apprentices should be trained by the works and not by the Party (German Labor Front - DAF).

At the suggestion of the District Office for Economic Affairs, Jackson was appointed Military Economy Leader (Wehrwirtschaftsführer) by the Reich Ministry for Economic Affairs as late as 1943. This was merely a title which did not constitute any special honor for a man in his position.

II. Jackson's activity in the Hoechst works and in the Mainberg works.

After this description of Jackson's activity within the entire I.G., which has been strengthened by the evidence produced, and of the role he played in public life, may I now turn to his work with the Mainberg works and particularly with the Hoechst works.

a) Position as Deputy Reichsleiter.

In 1932, Jackson was transferred from Leverkusen to Hoechst as Chief Engineer, in order that he should modernize the outdated works as economically as possible. All the engineering departments of the Hoechst works were subordinate to Jackson. In 1938, i.e., shortly before the outbreak of war, Professor Lautenschlager was appointed manager of the Hoechst works and of the works combine Mainberg. Jackson was appointed his deputy.

The regional centralization of the various works within the works combine was carried out solely for the purpose of better mutual co-operation and co-ordination of production. The various works remained entirely independent and had

Final Floor Jackson

their own independent Betriebsleiter. In particular, Professor Lautenschlager did not exercise any special influence in the works subordinated to him within the Hoescht works combine, but respected the independence of the individual Betriebsleiter. Jackson was broadly informed of all questions concerning the management and in the absence of Professor Lautenschlager decided independently on urgent matters.

b) Air Raid Protection.

The Hoescht works were often mentioned by the Prosecution in its statements in connection with the air raid protection question.

Dealing with this question, I should like to point out first that, since 1926, air raid protection installations had been expressly prohibited in Germany by the victors of the first world war, that they constituted a merely passive protection such as the Fire Brigade and the Disaster Protection Squad (Katastrophenschutz) and that consequently intention to participate in the preparation for an aggressive war cannot be proved. In connection with these general questions, may I refer to the statements submitted by my colleague, Dr. Berndt, and myself deal only with the charges filed against the Hoescht works and particularly against Jackson.

Air raid protection questions concerning the industry fall into the sphere of technical engineering, and within the I.G. it was, therefore, the Engineering Committee (Toko) which played an important part in this connection. In June 1933, when Jackson was chairman of the Toko in Hoescht, these works were made by the management of the I.G. the principal agency for questions concerning industrial air raid protection and, at the suggestion of the I.G., he was entrusted with the handling of all air raid protection questions. This was not done because the I.G. intended to be particularly active in the field of air raid protection; on the contrary, Jackson was to see that none of the works should do too much or spend too much money in this respect, owing to the pressure of the Party or of the Wehrmacht.

Final Plan-Jackie

It was clearly proved by the documents produced by the Prosecution, Jackie actually repeatedly protested against the demands of the authorities and tried by all means to reduce costs and to put on the brakes.

In Bochum itself very little was done for air raid protection. The only large air raid shelter was built during the last year of the war. In any case, at the beginning of ^{the} war, Bochum was not prepared for air raids and this fact seems to me to refute all the extensive conclusions of the Prosecution.

c) Mobilization Plans.

The Prosecution submitted a number of documents pertaining to the question of mobilization plans. These plans happen to originate from the Bochum works, because the archives of the Bochum works containing the entire correspondence pertaining to mobilization remained undamaged. These documents do not contain any evidence that the Bochum works made any preparations for an aggressive war. These documents consist of letters addressed to Bochum by official agencies or by the Department VII, upon order of official agencies, and of replies to these inquiries. These documents contain neither any evidence that steps taken in Bochum were any different from those usually taken in a modern State as precautionary measures for national defense.

Jackie's activity in connection with the so-called quota plans (Belegungspläne) consisted solely in stating how many people, how much coal and how much current would be required for the production as outlined in the quota plans.

III. Production of the Hoechst Works.

The Prosecution in connection with the preparations which, in its opinion, were made for aggressive war, dealt also with the production of the Hoechst works. The evidence produced thoroughly clarified this point also.

Hoechst is one of the oldest works of the I.G. and parts of it were rather outdated. In many respects, it did not develop to the same extent as other large works of the I.G. Only from 1935 onwards was it possible to carry out a certain modernization of the works.

Hoechst produced inorganic products such as sulphuric acid, salt acid, nitric acid, chlorine, caustic soda; and furthermore numerous intermediates, particularly those for the production of dyestuffs. It produced primarily high grade dyestuffs. It had the largest solvents factory in Germany and manufactured varnishes and plastics. In the nitrogen field it produced regularly enormous quantities of calcium nitrate for use as fertilizers. The production of the pharmaceutical department of Hoechst in the field of medical drugs was considerable. Under the management of the defendant Lautenschlager, its reputation became known all over the world, on account of its production of medical drugs, such as Pyrazinon and Salvarsan, and on account of its research work and achievements in the field of hormones and vitamins.

Investments in the Hoechst works were comparatively insignificant after 1923. During the entire twelve-year period from 1933 to 1945, only 26 million Reichsmark were invested, which means 16 per annum of the total peacetime value of the Hoechst works. The investments hardly equalled one sixth of the usual depreciation deductions.

Even during the war, no substantial changes were made in the production program of the Hoechst works. The works worked only on one war contract for the delivery of 375 tons of fog acid (Nebelwasser) per month.

That was in relation to the other production, e.g. 6-8,000 tons sulphuric acid a month, over 17,000 tons nitrogen fertilizer monthly etc., a quantity so small that it hardly counted. It may well be that, of the large production, especially in acids and intermediate products, a certain fraction may finally have found its way through even uncontrollable channels into other factories and been used in the production of explosives. It lies after all in the very nature of the chemical industry that the same intermediate products and acids can be used both for the production of dyes and other peace commodities and for the manufacture of war products. This, however, does not alter the fact that at all times the production was intended almost exclusively for civil requirements and for export. Explosives, such as for example Hexagon, were systematically never produced in Hoechst.

IV. Knowledge of Aggressive Intentions.

The Works Management of Hoechst had no more knowledge of the military intentions of Hitler than ^{had} other Germans. So far as Jenkins in his position in I.G. as a whole could see, everything pointed against an aggressive war. In the summer of 1939, approval was given for the construction of a new coloured-film factory on the Polish border. At the same time, war-essential patents were being applied to large foreign concerns. The I.G. took a participation in an English explosives factory. It built a dyestuffs factory in England. In the stockpiling of chemicals, Germany, as the report of the U.S. Strategic Bombing Survey shows, was not prepared for a war.

Among other things, the fact that the two English chemists who visited the Hoechst works in late August 1939, were shown frankly everything they wanted to see, proves that the works management of Hoechst suspected nothing of an impending war. At the same time, and on the same journey, they had been denied inspection of some plants in other, including French, factories.

Further evidence of how far the works management of Boschart were from believing in an impending war, is given in the statement of the witness Pösch, who described more in detail two cases in which Jasmno, only a few days before the outbreak of the war, refused the stockpiling of food provisions and requirements for the Air Raid Protection. At the same time, Jasmno expressed clearly his view that nobody in Germany would be so mad as to unleash a war.

According to all they saw and heard, this was the way the works management Boschart was obliged to think. This attitude, however, also corresponded with the whole nature of the scientist Lautenschlager and the other technicians Jasmno, both brought up in science and accustomed to strictly realist thinking, then which nothing was further removed from the sphere of an emotional fantasy, such as Hitler.

Indictment Count II: Plunder and Spoils.

Jasmno is named in the second count of the indictment in connection with the oxygen works in Alsace-Lorraine and Luxembourg. In the years 1940-1941, the I.G. leased the oxygen and acetylene works in Metz-Diedenhofen and in Strassburg-Schiltigheim, as well as the oxygen works Rodlauren.

During the war, a great deal was destroyed in Alsace-Lorraine, especially bridges, traffic plants and so on. In order to restore the economy and to bring about orderly conditions in the occupied territory, it was necessary to take the quickest means to remove the traces of this destruction. For this purpose, welding and cutting tools were required and large quantities of oxygen for these. It is a very troublesome matter to transport oxygen in the fraillier heavy iron containers.

In consequence of the bad transport position, it was not possible to keep the Alsace-Lorraine district sufficiently supplied from Germany. In the interests of Alsace-Lorraine economy, therefore, its own oxygen and acetylene works had again to be brought into production.

The owners were not there. Therefore, the German Occupation Authorities communicated with the suppliers of the same product in Germany, namely the Vereinigte Stahlwerke (50% I.G. and 50% Gesellschaft Linde) and requested them to bring the works again into operation. This was not simple matter. The container-park was for the most part no longer existent. The works in Schiltigheim had been entirely evacuated by their French owners; all the machinery had been removed. The I.G. now set up in the vacant rooms of the Schiltigheim factory two modern oxygen plants, and only through this were the empty rooms once again converted into a factory. In the same way, the other works were again put into operation and modernized with new machinery belonging to the I.G. Furthermore, oxygen and acetylene containers were provided for the works out of the stocks of the I.G.

The entire production in the Alsace-Lorraine oxygen works was intended solely for the restoration of the Alsace-Lorraine economy and indeed remained there without exception. On the retreat of the Germans, the works remained behind undisturbed together with the property of the I.G. For the owners of the works, the position therefore was that the value of their works was not reduced by the activity of the I.G., but on the contrary considerably increased.

Jachno, as a pure technician, had nothing to do with the purchase and lease negotiations. The party responsible for this commercial part of the oxygen sphere was the "Chemical Sales" ("Verkauf Chemikalien") Department, under the direction of the Vorstand member Weber-Andreas. The technical part of the oxygen sphere was conducted by Prof. Heller, under Jachno, Jachno's activity

was confined to supplying the necessary engineers and machinery to the works.

Jochno, as the technical oxygen specialist, was only afterwards instructed regarding the concluded contracts. He had no grounds for assuming that it would be a case of plunder and spoliation. He knew that, for the sake of the restoration of the economy and thereby of the maintenance of order in the occupied territory, it was urgently necessary to put the oxygen works again into operation. This measure was within the framework of Art. 43 of the Hague Regulations for Land Warfare. The decision as to the form in which the investments necessary for the beginning of production could be secured was a matter for the business men and lawyers. What Jochno did know was that nothing was taken out of the country, but that, on the contrary, much was put into it. The I.G. had to a very large extent invested with machinery and containers. The production was intended for the country and remained in its entirety in the country.

Even putting aside for the moment that Jochno ~~did~~ not participate in the agreement negotiations, he was as little likely as any other objectively minded person to suspect in this situation and those negotiations that they could be regarded as plunder and spoliation.

Indictment Count III: Slavery and Mass Murder.

Count III of the Indictment charged the defendants with the employment of foreign workers in the I.G. works.

I. Collaboration of the I.G. (Engineering Committee).

The defendant Jochno is especially charged with having, in his capacity of Chairman of the I.G., supported the foreign worker program by approval of the building of huts.

The Toku did in fact take part in the credit applications for the building of huts. The applications, however, were only examined by them, after the necessity of the hut construction had been investigated and confirmed by the Soku (Social Committee). All the Toku had to do then was to examine from the technical engineering standpoint, whether the mode of construction was practical, and especially whether sufficient auxiliary installations, such as dining rooms, kitchens, sanitary equipment, had been provided for, also whether the prices were kept within suitable limits. As it was a question of the standard type of huts in the style of the huts of the Reich Labor Service, the investigations were practically confined to ascertaining that sufficient auxiliary installations had been provided for.

According to all that has been put forward in this trial, the huts were generously and suitably constructed and were available in sufficient quantity. Therefore, in my opinion, no reproach can be levelled against the defendant Jackson on account of the recommending of the construction. A reproach, could, however, have been justly made against him if he had refused to approve a sufficient number of huts. For then the foreign workers would have had to live far more primitively and closely in the quarters already existing. The recommending of the huts could only work out to the benefit of the foreign worker.

A complete refusal to examine these credit applications with the intention of sabotaging the allocation of foreign labor was in the long run practically impossible. The only consequence would have been that Jackson would have been thrown into a concentration camp for sabotage, if nothing worse had happened to him. The I.G. was compelled under authoritative regulations to employ the foreign workers necessary for the fulfillment of their production orders. A refusal would have been punished as sabotage and treason.

II. Plant Management Hoechst and the foreign workers.

a) During the war foreigners were employed at the Hoechst plant the same as in other large German plants.

1) Professor Lautenschlager was Betriebsführer of the Hoechst plant, and thus was the responsible man, according to the law. The question, as to what extent Joetno, in his capacity as Professor Lautenschlager's deputy, was responsible for the employment of foreigners, will be left open. Joetno himself stated on the witness stand that he would willingly and with a clear conscience take the responsibility, as no unlawful employment and treatment of foreign workers took place at the Hoechst plant. I would therefore like to deal here with the question of the employment and treatment of foreign workers on behalf of the Plant Management of Hoechst.

2) It has already been fully discussed that the I.G. plants only accepted foreign workers when they were forced to do so. The Hoechst plant made no exception, if only because of the difficulties regarding their employment in the chemical plant and the costs involved. For instance, Hoechst had to pay an additional RM 2,877.-- for every individual foreigner. In any case, Hoechst always tried to obtain German workers. Their requests, however, were turned down by the authorities with the explanation that the German workers must be reserved for plants engaged in essential war production. But Hoechst was not one of these. That is why the percentage of foreign workers remained comparatively small, between 22 to 24 %. There were only about 2400 at Hoechst, at the most about 3000 foreign workers out of a total staff of 12 000 workers.

The other Main-wo plants had independent Betriebsführer who were solely responsible under the law. No evidence has been submitted that an excessive number of foreign workers were employed there, nor that they were treated badly.

b) Working conditions.

Evidence has shown that the management of the Hoechst plant did everything possible for the foreign workers, once they had to accept them.

1) The plant leader of Hoechst, Professor Lautenschlager, expressed in many discussions with his collaborators the standpoint of the plant management, which was as follows: "People have been entrusted to us who will work for the plant. If we expect from them satisfactory work, we have to see to it that they feel free and work without coercion. We must treat them well." These directives of the plant management were adhered to and care was taken to see that they were strictly observed.

The foreign workers at the Hoechst plant worked together with the Germans. They did the same type of work under the same conditions. Later I shall refer in more detail to the result of the evidence on the position of the foreign workers, as the directives of the plant management were the same for foreign workers and prisoners-of-war.

2) Apart from foreign workers, there were also French prisoners-of-war at Hoechst, but these were few in number and worked only for a short period. The Hoechst management took special care of these prisoners-of-war. Also in this respect Professor Lautenschlager issued a directive by the management.

It reads: "The prisoner-of-war is our most honorable collaborator. We shall treat him as we would like our fathers, brothers, or sons to be treated, should they have the misfortune to become a prisoner-of-war." Characteristic of the attitude of the plant management towards prisoners-of-war is the incident, which has been testified to here, when the witness Poeth released a wounded American seaman from an excited crowd on the plant site and brought him to safety. At the time his action was fully approved by the plant management who shielded him from the Party officials, for whom at that time Goebbels' lynching order was already law.

It was in no way contrary to international law to employ prisoners-of-war at the Hocht plant, as it was not directly connected with ^{warfare} actual. Wehrmacht officers, who had been specially trained, constantly checked whether these regulations of the Geneva Convention were complied with. For the rest, the prisoners-of-war were transferred to civilian workers' status as early as June 1943.

- 3) In connection with Jackson the Prosecution also mentioned the employment of prisoners-of-war at the Griesheim-Weiden plant, Griesheim-Weiden was not a chemical, but a machinery and fittings factory, which manufactured tools for welding. During the war the factory supplied a small part of its production to Wehrmacht workshops and repair depots. These needed welding and cutting tools just as much as hammers, nails and other tools. I do not consider the employment of prisoners-of-war on the production of such ordinary tools, to be contrary to law.

any more than their employment in a sugar factory, part of whose production is delivered to the Wehrmacht. This work was certainly not "directly connected with actual warfare" as laid down in article 31 of the Hague Convention. But Jacine was no man of international law. He knew that the employment of these prisoners-of-war was constantly supervised by the Wehrmacht and that he could rely on their judgment.

- 4) The working hours of all foreign workers, including the prisoners-of-war, were the same as those for the Germans, i.e. between 53 and 56 hours per week. The plant management was in a difficult position in regard to the labor office, whose aim it was to save thousands of workers at Hoechst by extending the working hours. But Professor Leutenschlaeger and Jacine won their argument that if the working hours in the chemical industry were extended, the danger of accidents would increase.
- 5) If the Prosecution states that also foreign women were employed at Hoechst, this is correct to a small extent. But that was nothing special, as women had always been employed at Hoechst, and during the war the men who had been called up by the Wehrmacht were partly substituted by German women. Later on Russian women were employed at the same places of work together with German women at Hoechst.

Some of the Russian women had come to Hoechst with their families. A lot was done for these women. The families were able to live together. There was a well equipped Kindergarten for small children, with a garden

Teacher and women from the area to take care of them. For the older children a Russian school was set up with a Russian teacher from Minsk.

The plant had issued detailed instructions for the protection of the women and children. Children under 12 years of age could not be employed. On the other hand, a few boys between 12 and 14 years of age were employed at the plant, but only for half a day and at the express wish of their parents. They were only employed on very light work, such as running errands, cleaning bicycles, etc. and were not to be employed as a writer of form. A few older women also worked at their own request; they were employed in cleaning the huts ⁱⁿ and the sewing rooms. Every foreigner had a medical examination when he was employed and was only given work which was suitable according to his strength.

c) Treatment, discipline.

The plant management had issued strict directives that the foreign workers were to be well and justly treated, especially during their work at the plant.

1) Naturally it was not easy to maintain discipline and prevent punishable offenses in such a large plant as Hoescht, which had 12000 workers and employees. Nevertheless, attempts were made at Hoescht to take precautionary measures to prevent punishable offenses, such as thefts etc., from being committed. But if they did occur, they were not immediately reported to the police, and an effort was made to settle the matter at the plant. Even when the factory guards were made auxiliary policemen in 1944 by official order, Hoescht succeeded in reserving the right for the plant management even after 1944 not to pass on denunciations by the factory guard.

Final Plan Jaegers

In an official regulation which I myself saw, the Betriebsfuhrere were made responsible for the maintenance of discipline. This instruction authorized the administration of admonitions and the imposition of fines. In serious cases, the offender was to be reported to the Police in order that punishment might be administered, or that the culprit might be sent for a short period to a disciplinary labor camp (Arbeits-erziehungslager).

Such punishments were not a voluntary affair on the part of the Betriebsfuhrere. I submitted to the German Labor Front a circular letter from the Gen Commissioner for the Frankfurt area, in which the Betriebsfuhrere themselves are threatened with punishment if they do not make sufficient use of their authority in the matter of discipline. Nevertheless, the Management of the Hoechst works endeavored to restrict the number of punishments imposed to a minimum. The foreign workers were, in fact, treated with more leniency than were the German workers. For example, in the case of the Prosecution witness de Bruyn, a Belgian, who absented himself from work without permission on 27 working days out of 466, no action whatsoever was taken.

Naturally, in the course of the years, there were cases among the 12,000 workers in which it was impossible to avoid imposing a punishment. A fairly old, experienced lawyer was entrusted with the organization of the disciplinary system, the correct use of authority in the maintenance of discipline being thus guaranteed. Throughout the war, only 4 reports were received of cases of severe infringements of disciplinary regulations, entailing the removal of the offender to a disciplinary labor camp. The persons concerned had already committed from 12 to 15 offenses for which they had been admonished or for which fines had been imposed. Having again been warned, they were again found guilty of committing serious offenses, with the result that there was no solution other than to send in a report.

Final Plea-Jachne

Before the report was compiled, the previous offenses were examined individually in the presence of the Workers' Council (Arbeitervertragsrat). The workers remained from 3 to 4 weeks only in the disciplinary labor camp and then returned to the work.

2) As previously stated, there were the exceptions, as was inevitable in such a large works, but these exceptions were nevertheless extremely rare. While the authorities advocated a policy of maintaining discipline by means of punishment of the offenders, Roehat's primary effort was directed towards the prevention of offenses by practical instruction of the workers. On the other hand, the works took severe action against any German who might be guilty of an offense against a foreign worker. I have given some striking examples of this fact, and will deal with these examples in greater detail in the Trial Brief. The cases which I have quoted show with absolute certainty that the standard on which Germans were judged in the Roehat works was much more strict than that set for foreigners, and that the foreigners were energetically protected against any offenses on the part of the Germans. The fact that the foreigners are referred to as "foreign fellow-workers", as can be seen from the documents submitted to the Court, is characteristic of the attitude of the Management of the Roehat Works. The Works Management of the Roehat works looked upon the foreign workers, not as slaves, as the Prosecution maintains, but as their fellow workers.

1) General Care of Workers.

In consequence of this attitude, the Works Management did everything possible to ensure good accommodation and food for the foreign workers. Lautenschlaeger demanded that the Chief of the Social Welfare Department (Sozialreferent) make every effort to bring about a steady improvement in the food and accommodation provided for the foreign workers, and that, with this aim in mind, he do everything within his powers, regardless of expense. Despite the fact that he was severely overworked, he personally supervised and inspected the food and accommodation provided for the foreigners.

1) Accommodation.

The foreigners were housed, as were the German filitons, some in one of the works billets, the so-called "bachelor hostel", others in hotels and the remainder in lodgings. These lodgings were large & spacious. They could be heated and were comfortably equipped. Jans issued coal freely in excess of the normal ration for the heating of the billets, even to the extent of infringing war-time regulations, coal which was officially intended for the power supply of the works. The rooms were kept clean at the expense of the works, by special teams of charwomen. The camps are still in existence today and are mostly occupied by the so-called "Displaced Persons". The individual nationalities had their special man of confidence who frankly brought all their wishes and requests before the Works Management.

2) Food.

A particularly efficient and capable expert, in the person of the witness de Vries, was put in charge of catering for the foreign workers. When he took up his duties in 1942, Prof. Lautenschlager, the Works Manager, expressly told him, "All the money you may require is at your disposal. Buy whatever you can. Expense is no object. If these people are to work for us, they must be decently fed." De Vries took full advantage of this generosity, and whenever he could buy unrationed food, he did so, buying hundreds of thousands of marks worth of food to supplement rations. De Vries took care that the butchers delivered only the best meat, and that only high grade food was served.

Six kitchens were built for the foreign workers. They were situated at a distance from each other, and were equipped with the most modern refrigerating installations.

Final Plan Jaekne

Following the occupation, they proved adequate for the feeding of five times the number of persons, a proof of the generous scale on which the kitchens had been established. The individual nationalities had their own kitchens in which their food was cooked. The great variety of foods served and the imagination used in their preparation can be clearly seen from the original menus submitted to me. They also indicate the abundance of food which was available, especially of the most nutritive types of food. For example, the foreign workers received 500 grams of meat per week. I have also succeeded in locating a former Russian cook who states in his affidavit that the food served to the Eastern workers was plentiful and of good quality also.

The good quality of the food served to the foreign workers at Rochet had such a reputation that attacks were made on the works by the Party and by the civilian population, on the grounds that the foreign workers were receiving better food than the German civilian was normally in a position to buy for himself. It is significant also that the German chemists employed on night shifts in the works, requested that they might be allowed to eat in the Russian kitchens instead of eating German fare, because the food there was better.

Tables of weights kept by the works doctors show that far from decreasing, the average weight of the foreign workers showed a tendency to increase gradually. Naturally, the conditions governing the housing and feeding of foreign workers were immediately examined by the advancing American troops. When taking over the foreign workers' camp, the American Major Radigan expressed to the witness de Vries his recognition of the good food provided for the foreign workers, and commissioned him to undertake the catering for "Displaced Persons".

Final Final Justice

3) Clothing.

The Boschke Works also catered on a generous scale for the clothing of the foreign workers. The foreign workers coming from the East, the majority of whom were very poorly clad, were provided with new clothing within a very short period. Special tailors' shops and cobblers' shops were provided for the workers. The works also provided working clothes. The clothes were laundered in the works' own laundry.

4) Medical Attention.

It goes without saying that a works of which the Betriebsführer was a doctor and a scientist of Prof. Leutenachner's stamp, made an unusually great effort to give adequate medical attention to its workers. The works had a first rate ambulance center of its own, equipped with waiting rooms and consulting rooms. This was open to foreign workers and Germans alike. In addition to the 3 German doctors, patients were treated by 1 German lady doctor, 1 Russian lady doctor and 1 French doctor. The drugs prescribed for the foreign workers came from the works' stores and particularly valuable medicaments, which could not be bought by the normal consumer in the shops, were used in dispensing their prescriptions. As far as medicaments were concerned, then, the foreigners were in a far better position than the Germans not employed in the works. A doctor was on duty day and night to deal with works accidents. A large hutment equipped as a sick-bay was available for the accommodation of in-patients. The Russian lady doctor had her quarters in this hutment. In serious cases, the patients were transferred to special hospitals. Thus, for example, a Russian who had methanol poisoning spent 1 and a half years in various hospitals. As many witnesses confirm, the foreign workers had complete confidence in the medical treatment. One can best see how great was their confidence in the doctors from the medical card index, which is still in existence today.

Dr. De Jager

I have shown with the help of this card index the conscientiousness with which the patients were treated, and have also proved how, on many occasions, a doctor was called in, even for a minor complaint.

The comprehensive medical attention received by the foreign workers reflects very special credit on Professor Lantonschlagor personally. I have submitted evidence in proof of the fact that, despite extreme overwork, he personally supervised the medical service, and, if necessary, sprang into the breach and gave medical attention himself.

Such an attitude on the part of the Works Manager was bound to have its effect. The result was the pleasing fact that the average mortality rate among the foreign workers at Hoechst was less than that of the population of the German Reich during the peace-time years 1931 to 1936.

b) Payment of Workers and Recreational Activities.

I could also bring much evidence to prove that Hoechst made considerably more than usual endeavours to regulate the payment of the foreign workers in accordance with official instructions and to foster cultural interests amongst them. I shall deal with the subject in greater detail in the Trial Brief.

c) Affidavit by de Bruna.

In connection with the whole subject of the employment of foreign workers at Hoechst, the Prosecution has submitted one single affidavit, deposed by a former foreign worker. The person concerned is de Bruna, formerly a carpenter and now an employee of the Belgian Government. I have refrained from cross-examining this witness, as the affidavit contains such obvious inaccuracies that I preferred to submit evidence to refute the statements contained in it, thus bringing to light much more directly and completely the circumstances, which did, in fact, prevail at Hoechst. Within the limits of this brief pleading, I propose to restrict myself

Final Plea, Jacobs

to a few points in which the conduct of the deponent himself demonstrates the inaccuracy of his statements,

- 1) De Bruyn states in his affidavit that in June 1943, he was taken from the prison at Antwerp via Aachen direct to Roehat, a statement by means of which he obviously intends to stress the fact that his work in Germany was not on a voluntary basis.

As the documents on the employment of foreign workers in Roehat have not been destroyed, it has been possible to find the deponent's employment card. The latter shows that the deponent came to Roehat as a member of the staff of the firm of De Witt, Antwerp, which lent workers to Roehat. . . . It was not the policy of this firm to send workers recruited on a compulsory basis. On the contrary, at least a proportion of the workers had already been employed by the firm for years, and formed a part of the permanent staff. The fact that during the short period of his employment at Roehat, de Bruyn was granted home leave no less than three times, and returned each time of his own free will, proves conclusively that he was not employed in Germany on a compulsory basis.

- 2) The deponent states that conditions of life at Roehat were "inhuman". At least twice as much food would have been required to still the pangs of hunger. The outbuildings were filthy, and were alive with vermin. The contents of the straw palliasses were never changed. The camp was surrounded with barbed wire and was guarded by the factory police.

These assertions are roundly contradicted by the wide range of evidence submitted to me on the true conditions. Particularly if one compares it with present conditions in Europe, the food was more than adequate, as is proved by the menus submitted to the Court alone.

Final Blue-Printing

The latrines were cleaned daily by special teams of prisoners, paid by the works. They were regularly deloused and the contents of the straw pallets were frequently changed. Only the prisoners of war camp was surrounded by barbed wire. This did not apply to the foreign workers' camp. The factory police had nothing whatsoever to do with the foreign workers' camps.

For the rest, the deponent's own conduct gives the lie to his assertion in this case also. During the period in which he worked at Reichsden-Betrieb, he continued to live at Hoochst, although this involved a daily journey to and from his place of work, an undertaking which, in view of travelling conditions at that time, was no very pleasant one. He would certainly not have done this had he been dissatisfied with the treatment, accommodation and food at Hoochst.

- 3) Furthermore, de Bruyn claims that he worked 56 hours per week at the beginning, and that the hours increased, until he was finally working 12 hours per day, including Sundays.

De Bruyn's employment card again clearly refutes this statement. Up to the time of his departure from the works on 14 March 1945 (a total of 527 work days), he worked 3933 hours over 466 working days, giving an average of 8.5 hours per day. Throughout the whole of this period, he worked on only 3 Sundays.

- 4) Finally, the deponent states that the medical treatment was "nothing short of inhuman". Thus it was forbidden to be sick, as it was literally more than one's life was worth. Foreigners were refused permission to enter the ambulance rooms, which he admits were first class. Injured workers received no treatment whatsoever.

The Tribunal will remember, on the other hand, the statements made by the defendant JAMES and witnesses POORE and FINE DEL on this point. In particular, the Tribunal will draw its conclusions from the original medical certificate of the Depoant de REUNE which was submitted.

Fortunately the defendant's medical file card was still available. It shows that in the 1 3/4 years of his stay in Hochet de REUNE reported to the sick-room no less than 20 times, mostly for minor ailments, apart from visits for changing bandages. The first time he came because of a redness of the heels and tips of the toes, another time because of a carbuncle and two days later because of a surface wound. In January 1944 he was given hot air and massage treatment for rheumatism of the thigh. 5 days later he appeared again because of a carious tooth and was sent to a dentist. In December 1944 he reported because of bronchial catarrh and received valuable medicine. The remarkable thing is that at that time he was not in Hochet at all, but in Wiesbaden-Biebrich with a foreign firm and he stayed away from work there solely in order to be able to consult the doctor in Hochet. He does not certainly would not have done this, had he been afraid of the treatment in Hochet.

Finally in January 1945 he came because of warts and for the sake of this slight beauty blemish he was handed over by a German doctor to a skin specialist for electrical treatment. Even in March 1945, when there really were other things to worry about, he had himself treated again for three warts.

This conduct on the part of the defendant himself confutes his argument clearly and unmistakably, I do not think that any reliance should be placed in a witness who states such manifest untruths.

III. Auschwitz.

The Prosecution believes that it can also connect JAEGER with the charges brought in connection with Auschwitz and the gassing of human beings. The Prosecution has produced very little concrete evidence of this. I can therefore restrict myself in this brief plea to a few statements. JAEGER was in Auschwitz 3 times for a few brief hours on the occasion of Engineering Committee (Toko) meetings. He has given the Tribunal precise information as to the purpose and duration of each visit. On the first two occasions he did not see the prisoners at all. The first visit, in fact, took place at a time when there were no prisoners in Auschwitz. On the second visit he entered only the administrative building of the factory. JAEGER was in Auschwitz for the third time in April 1944 on the occasion of a Toko meeting, and about half a day was spent in inspecting the works with their modern architecture. Herr JAEGER gave exact information on what he saw on this visit. His impressions were restricted to technical matters. He stated with conviction that nothing struck him especially about the few prisoners whom he caught sight of. On this point his description is identical with that of the witness BIEBERFELD, who also took part in this inspection and made detailed statements before the Tribunal.

JAEGER had no sort of responsibility as far as the technical or the organizational side of the Auschwitz works was concerned. The prosecution believes that it can secure knowledge and responsibility on JAEGER's part on the basis of his

having conscientiously stated that he once heard rumors about
 Goring. JAEHNE himself, however, explained clearly that it was a
 question merely of rumors and that he had placed no faith in them.
 The state of Germany at the time was such that countless rumors were
 in circulation. These were not, however, believed by people of normal
 intelligence, but were recorded as enemy propaganda. The actual
 occurrences were shrouded in such an elaborate system of secrecy and
 camouflage that they did not reach the ears of the outer world.
 JAEHNE must also be believed when he states that his son reassured him
 on the subject to the effect that only rumors and not concrete facts
 were concerned. If the Prosecution counters this by mentioning the
 affidavit of his son Herbert JAEHNE, it can be demonstrated from this
 very affidavit that Herbert JAEHNE states that he did not hear of the
 massacre until November 1944. His father's visit, however, had taken
 place in April 1944. By November 1944 the events of the war had ^{already} advanced
 to such an extent that Auschwitz was about to be evacuated and JAEHNE
 was no longer in touch with his son.

Conclusion.
 =====

Mr. President, Your Honors,

The Prosecution itself brought very little evidence against the defendant
 JAEHNE on the subjects with which we are concerned. For the rest, they
 considered it possible to represent him as a criminal and conspirator
 merely on the grounds of his position as Vorstand member of the I.G..
 I do not think that this is sufficient to condemn a man who, like
 JAEHNE, can look back on a blameless life. Fact imposes certain
 limitations on the position of a German defense counsel with an
 American Military Tribunal.

On the other hand, the position of the Tribunal also seems to me to be difficult. There are so many opportunities for misunderstandings, from differences in language to the difficulties encountered by a member of a democratic State in understanding events in a totalitarian State. Germany's transformation into a totalitarian State did not take place in a manner which could be clearly recognized by someone living in that State, but imperceptibly and by degrees. All his life, JAEGER was a technical man. This technician did no more than thousands and thousands of technicians and industrialists in all other belligerent countries. He stayed at his post and did his duty. He relied on the politicians of his nation to fill their posts as honestly as he. In his own circle, he acted with decency, propriety and good sense. As anyone who understands German conditions will confirm, such a man was left in his post by the Party only because as a result of the war they could not dispense with his expert knowledge. Otherwise JAEGER would long ago have had to relinquish his post to someone more reliable from the point of view of the totalitarian system, and would have been the victim of a purge. The proofs of JAEGER's honest and unimpaired attitude to the totalitarian system are too numerous to be overlooked. The consequent stand taken by the Hoechst works management on the foreign labor question has also been proved by a great deal of evidence. The same applies to participation in preparations for war, or to pillage and spoliation. The ruling spirit in a factory is the spirit of the factory management. I think that I have demonstrated that the spirit prevailing in the Hoechst dyestuffs factory was a good one. It is therefore my duty, in accordance with my conviction, to appeal for the acquittal and complete rehabilitation of the defendant JAEGER.

EXHIBIT

26 May 1948

We,

Eugene R. KUN, JAC No. D-429798,
Julius J. STEUBER, JAC No. A 442654,
Jane M. STEIN, ETC No. 21144,
Brigitte TURK, ETC No. 3513C,
Beryl C. BARNICK, ETC No. 21183,
Patricia E.C. WOOD, ETC No. 21199,

hereby certify that we are duly appointed translators for the
German and English languages and that the above is a true and
correct translation of FINAL PLEA JAEHNE.

Eugene R. KUN,
JAC No. D-429798,
(pages 1-3)

Julius J. STEUBER
JAC No. A-442654
(pages 4-8)

Jane M. STEIN
ETC No. 21144
(pages 9-13)

Brigitte TURK
ETC No. 3513C
(pages 14-18)

Beryl C. BARNICK
ETC No. 21183
(pages 19-26)

Patricia E.C. WOOD
ETC No. 21199
(pages 27-36)

File Beth Williams (Cassidy)

u

Case 6
Defense

PLEADOYER
für den Angeklagten

Dr. August von KRIEGER

gehalten vor dem
Amerikanischen Militärgerichtshof Nr. VI in Nuerberg
Im Prozess gegen KRAUCH u. a.

überreicht durch:
Horst Felckmann
Rechtsanwalt

Sein



Herr Praesident, meine Herren Richter ! !

Am Ende dieses Prozesses bin ich vor die Aufgabe gestellt, neben der detaillierten Darstellung im Closingbrief im Plädoyer eine Zusammenfassung zu geben von dem, was fuer Ihre Entscheidung das Wichtigste sein sollte. Dabei sehe ich mich vor allem der einen grossen Frage gegenueber: Was ist wichtiger: Die grossen Probleme des Rechts und der Wirtschaft zu erörtern, die diese Auerburger Prozesse immer wieder aufwerfen und sie zu Meilensteinen auf dem Wege der Menschheit vom Krieg zum Frieden machen, oder die Person des Angeklagten zu betrachten und nachstern festzustellen, welches a in Anteil an den angeblichen Verbrechen war, welche die Prosecution behauptet hat ?

Es laesst sich nicht leugnen, dass gerade hier in Nuernberg in allen Prozessen und gerade in den Plädoyers zwei Geistesrichtungen in Erscheinung getreten sind. Die deutschen Juristen haben das offensichtliche Streben nach Theoretisierung und Systematisierung; sie neigen dazu, alle Probleme in einen weiten, abstrakten Rahmen einzuspannen. Im Gegensatz hierzu beobachten wir bei den amerikanischen Juristen das Bestreben, einen Begriff nur anhand praktischer Erfahrungen und Resultate zu bilden.

Nicht immer aber ist die Deutsche Art der Entrechtung und Argumentation reine Theorie, sondern sie ist bedingt durch

den allgemeinen Hintergrund, vor dem die Prosecution das Gerüst ihrer Anklage aufbaut. Das "Bündnis der Industrie mit Hitler", die "Schwächung der potentiellen Feinde Deutschlands durch Kartelle und Patente" oder "Common knowledge", d.h. die "Kenntnis des deutschen Volkes, also auch dieser Angeklagten hier von den Angriffskriegsplänen Hitlers - das sind nur einige solcher allgemeinen Themen, welche die Prosecution in dem Prozess aufgeworfen hat. Sie führen tief hinein in schwierigste historische, politische, soziologische und ökonomische Fragen. Hier muss die Verteidigung den Nebel der Schlagworte und Vorurteile zer- teilen, der sich in Ihrem Lande, meine Herren Richter, in Krieg und Nachkriegszeit gebildet hat, und den die Prosecution als ihren grossen - aber unsichtbaren - Kronzeugen und Eideshelfer benutzt. Solch "halbes Wissen" ist nicht nur der Feind der Wissenschaft, sondern besonders der Ge- rechtigkeit.

Die Erörterung dieser allgemeinen Themen ist aber auch notwendig, weil sie fuer die Anklage häufig nicht nur Hintergrund sind, sondern die einzige, mit Gewalt konstru- lierte Verbindung zu den Handlungen der Angeklagten, deren krimineller Gehalt nach normalen Begriffen des Strafpro- zesses nicht festzustellen ist. Gerade in solchen Fällen koennte die normale Verteidigung eines Angeklagten an sich in einem Satz bestehen, - sie wird aber durch die weither- geholte Argumentation der Prosecution gezwungen, sich ein-

gehend mit schwierigsten Problemen der jüngsten Vergangenheit zu beschäftigen.

Nun, ich werde den notwendigen Erörterungen solcher allgemeinen Probleme keine unnötigen hinzufügen, denn diese Erörterungen gelten für alle Angeklagten, also auch für meinen Klienten. Nur einen Fragenkomplex allgemeiner Natur werde ich ausführlicher behandeln müssen: Die Kartelle, ihre nationale und internationale Bedeutung besonders im Hinblick auf künftige Kriege. Mit diesem Anklagepunkt soll Dr. von Knieriem nach den Dokumenten der Anklage offenbar belastet sein. Das ist meines Erachtens nicht der Fall. Aber in diesem Anklagepunkt sind wenigstens so konkrete tatsächliche Beziehungen Dr. von Knieriems auf Grund seiner Stellung innerhalb der I.G., seines Spezialwissens und auf Grund seiner tatsächlich ausgeübten Tätigkeit aufgezeigt worden, dass es möglich ist, als Verteidiger dazu konkret Stellung zu nehmen. Das erfordert aber eine Kenntnis der allgemeinen Fragen des Kartellwesens, die ich später kurz entwickeln werde.

Im übrigen aber werde ich nicht vergessen, dass wir uns in einem Strafprozess befinden. In einem solchen werden nicht angeklagt - oder sollten wenigstens nicht angeklagt werden - Wirtschaftsanschauungen, Systeme oder Organisationen, sondern Menschen und ihre Taten. Verurteilt werden können solche Menschen wegen ihrer Taten nur, wenn sie schuldig sind. "Strafrechtliche Schuld aber ist eine persönliche" - so

bestaetigt auch das Urteil des IMT einen uralten Grundsatz der Gerechtigkeit. Deshalb steht die Person des Angeklagten im Mittelpunkt der Schuldfrage - d.h. also: seine Stellung, seine tatsächlichen Beziehungen zur Umwelt, seine Befugnisse, seine Kenntnisse und sein Wissen und - nicht zuletzt - seine moralische Qualitaet im allgemeinen.

Das Urteil des Military Tribunal IV in Sachen gegen Flick u.a. bestaetigt diese - ich zitiere - : "Notwendigkeit, das Verhalten der Angeklagten in Beziehung zu den Umstrenden und Verhaeltnissen ihrer Umwelt zu werten. Schuld und Schuldsummass duerfen nicht theoretisch oder abstrakt bestimmt werden". (Engl. Prot. S. 11004 vom 22. Dezember 1947)

Dr. von Knieriem war ein Vorstandsmitglied der I.G. wie die meisten anderen Angeklagten. Die Prosecution wirft ihm vor, dass er als solches durch seine Taetigkeit oder durch seine Untaetigkeit schuldig im strafrechtlichen Sinne geworden sei. Herr Kollege von Metzler hat sich in seinem Plaedoyer und im Closingbrief grundsaetzlich mit dieser Theorie der Anklage auseinandergesetzt. Er hat sich dabei gestuetzt auf die schriftlichen Gutachten des Aktienrechtskommentators Dr. Walter Schmidt und des Professors des Strafrechts Mezger und auf die eingehende Darstellung der Geschaeftsfuehrung des Vorstandes in dem Exhibit Defense Nr. 170 v. Knieriem Dok. 34 band V. Sie, meine Herren Richter, koennen die sich fuer jeden einzelnen Angeklagten daraus

Rechtsanwalt Felckmann
Dr. von Knieriem
Fladdoyer

ergebenden Schlussfolgerungen nur ziehen, wenn Sie seine konkrete Stellung im Vorstand und in der Gesamtorganisation der I.G. kennen.

Dr. von Knieriem ist Jurist. Leider sind die Juristen - wohl ueberall in der Welt - in den Ruf gekommen, alles zu wissen und alles zu koennen. Ich erinnere mich an einen Kollegen, der nicht an Unterschaeztung seiner selbst und seines Standes litt, der folgendes behauptete: "Der Jurist ist der gebildete Laie auf allen Gebieten". Er war ein schlechter Jurist. Aber ich kann versichern - und der internationale Ruf bestaetigt es - : Dr. von Knieriem war und ist ein guter Jurist. Deshalb kannte er die Grenzen seines juristischen Fachwissens und die Grenzen seines Koennens in seiner Taetigkeit fuer die I.G.

Das war auch angesichts der Art der Organisation der I.G. garnicht anders moeglich. Entsprechend der Selbststaendigkeit der verschiedenen Betriebs- und Verkaufsgemeinschaften war auch das Rechtswesen dezentralisiert. Jedes Werk, jede Verkaufsgemeinschaft hatte eine Rechtsabteilung (legal department). Sie arbeitete selbststaendig und in eigener Verantwortung. Infolgedessen kam bei weiter nicht jede Rechtsangelegenheit in der I.G. vor Dr. von Knieriem, und auch wenn sie zu seiner Kenntnis kam, z.B. durch Erwaehnung im Vorstand, dann hatte er sie deshalb noch nicht rechtlich zu pruefen, sondern nur falls sie zu seinem besonderen Arbeitsgebiet gehoerte. Er hatte die verschiedenen Rechtsabteilungen

gen auch nicht laufend zu beaufsichtigen. Ihre Leiter unterstanden den Chefs der einzelnen Betriebe. Zusammenfassungen des Rechtswesens gab es nur durch zwei Einrichtungen: den Rechtsausschuss (legal committee) und die Zentralstelle fuer Verträge.

Der Rechtsausschuss bestand aus den führenden Juristen der verschiedenen Betriebs- und Verkaufsgemeinschaften der I.G. Dr. von Knieriem war sein Vorsitzender. Der Rechtsausschuss hatte kein Buero, keinen Sekretär, keinen Briefkopf und schrieb und erhielt keine Briefe. Formlos und unregelmässig traten diese Maenner zusammen - in dreizehn Jahren nur sechzehnmal. Durch diesen Ausschuss wurde ein gewisser persoenlicher Kontakt aufrecht erhalten zwischen den in ganz Deutschland verstreut sitzenden Juristen. Er ermoeeglichte einen gelegentlichen Gedankenaustausch ueber allgemein interessierende Probleme und die Besprechung einer einheitlichen Linie fuer diese. Dabei waren Spezialkenntnisse einzelner Herren fuer die uebrigen von Nutzen. Es war keineswegs die Aufgabe des Rechtsausschusses, die Taetigkeit der einzelnen Rechtsabteilungen zu ueberwachen, praktische konkrete Fragen zu entscheiden, Verträge zu genehmigen oder ueberhaupt irgendwelche bindenden Beschluesse zu fassen.

Die Zentralstelle fuer Verträge diente der Vermeidung von Kollisionen beim Abschluss von Verträgen. Verträge der I.G. wurden nicht einheitlich von einer Stelle bearbeitet

Rechtsanwalt Felckmann
Dr. von Knieriem -
Plädoyer

und abgeschlossen, sondern selbständig von den verschiedenen Stellen der I.G. Solch ein Vertrag verpflichtete aber die gesamte I.G. Deshalb prüfte die Zentralstelle fuer Verträge die Verträge auf Kollisionsmöglichkeit mit anderen Verträgen und registrierte sie. Dr. von Knieriem befasste sich nicht mit dem Routinebetrieb dieser Kollisionsprüfung. Das war nicht noetig, weil die meisten Faelle nicht problematisch waren, waere aber auch bei der riesigen Zahl von nahezu 2000 Verträgen technisch garnicht moeglich gewesen. Bei den wenigen Verträgen, mit denen er sich ausserhalb seines eigentlichen Arbeitsgebietes befasste, prüfte er aber nur die Frage der Kollision, denn der uebrige Inhalt war verantwortlich durch die einzelnen Rechtsabteilungen bearbeitet worden.

Diese Art, das Rechtswesen der I.G. zu organisieren, die ich soeben beschrieben habe, war angesichts der ungeheuren Groesse und Verschiedenartigkeit der Geschaeftszweige der I.G. die einzig moegliche. Eine andere, starker zentralisierte Organisation haette den fuehrenden Juristen in einem nicht ueberschaebaren und gresstenteils fremden Arbeitsbereich eine einfach nicht tragbare Verantwortung aufgebuerdet. Das Arbeitsgebiet und die Verantwortung des "First Lawyer", als welcher Dr. von Knieriem seit 1938 galt und zwar lediglich auf Grund der Bedeutung und Exklusivitaet seiner Spezialgebiete, seiner Zugehoerigkeit zum Vorstand und seines Vorsitzes im Rechtsausschuss, war auch in Vor-

Rechtsanwalt Pelckmann
Dr. von Knieriem -
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stand begrenzt. Keineswegs alle Rechtsangelegenheiten, welche vor den Vorstand kamen, ja nur ein geringer Teil waren Dr. von Knieriems Sache. Er hatte auch im Vorstand sein grosses und klar bestimmtes und begrenztes Arbeitsgebiet: 1) die gesellschaftsrechtlichen Angelegenheiten wie Satzungen, Vorbereitung der Hauptversammlungen, Kapitalveränderungen, Anleihen, Jahresbilanzen, grundsätzliche Steuerfragen, 2) die Konzernstruktur in rechtlicher und steuerlicher Hinsicht, 3) Patentfragen und 4) die Bearbeitung spezieller Fragen, z.B. die Vertragsbeziehungen mit der Standard Oil. Die übrigen Vorstandsmitglieder hatten, soweit es sich um andere Rechtsgebiete handelte, zu ihrer rechtlichen Beratung und Mitarbeit die Juristen der jeweiligen Rechtsabteilung zur Verfügung. Vorträge wurden nicht etwa durch von Knieriem im Vorstand vorgetragen, sondern durch das jeweils zuständige Vorstandsmitglied, es sei denn, dass es sich gerade um von Knieriems eigenes Arbeitsgebiet handelte. Wir erinnern uns dabei z.B. daran, dass der Vertrag Rhône Poulenc von Angeklagten Mann vorgetragen wurde.

So ist es selbstverständlich, dass nicht jede Rechtsfrage, die im Vorstand auftauchte, durch von Knieriem geprüft wurde; das war einfach nicht seine Aufgabe.

In den Sitzungen des Technischen Ausschusses und des Kaufmannischen Ausschusses war Dr. von Knieriem häufig zu

Rechtsanwalt F. Altkmann
Dr. von Knieriem -
Plädoyer

Gast, jedoch nur aus Interesse fuer bestimmte Rechtsfragen
aus seinem besonderen Arbeitsgebiet.

Diese Darstellung der Stellung und Tuetigkeit von Knieriem's in der I.G., welche fuer die richtige Beurteilung der Schuldfrage, also der Frage der persoenlichen Schuld unerlaesslich ist, ist das klare Ergebnis der Beweisaufnahme, d.h. der eigenen Angaben von Knieriem's, der Zeugenaussagen und Affidavits und der Dokumente, welche Prosecution und Verteidigung vorgelegt haben. Sie entspricht absolut der Darstellung, die von Knieriem in zahlreichen Vernehrungen schon lange vor Beginn dieses Prozesses gegeben hat. Die Prosecution hat weder im Kreuzverhoer noch im Rebuttal versucht, sie zu erschuettern. Ur die absolute Zuverlaessigkeit dieser Angaben noch weiterhin zu begruenden, bedarf es kaum mehr meines Hinweises auf die moralische Integritet meines Mandanten und die Tatsache, dass auch in seinen sonstigen Aussagen zu den speziellen Anklagepunkten Dr. von Knieriem sich nie in Widerspruch gesetzt hat zu seinen wiederholten und umfangreichen fruheren Vernehrungen, deren Protokolle die Prosecution gerade deshalb laengst nicht vollstaendig vorgelegt hat. Er hat auch im Stand nicht ein einziges Mal fruher von ihr abgegebene Affidavits oder fruhere Interrogationen berichtigt. Erst recht nicht sind ihm hier Unwahrheiten vorgeworfen worden.

Das Bild von dem inneren Wert der Persoenlichkeit des Ange-

Klagen von Knieriem wird in hohem Masse entscheidend sein fuer die Bewertung aller seiner Angaben zu allen Anklagepunkten. Es rundet sich an vollkommensten durch die Erörterung der Anklagepunkte "Schwächung der potentiellen Feinde Deutschlands durch internationale Kartelle, insbesondere durch den Vertragskomplex I.G. - Standard Oil."

Die Analyse der Beweisaufnahme gerade dieser Anklagevorwürfe ist fuer die Beurteilung des Wahrheitsgehalts der Verteidigung von Knieriems besonders ergiebig und wertvoll, weil wir hier einen Tatsachenkomplex haben, mit welchem sich Dr. von Knieriem damals tatsaechlich intensiv beschaeftigt hat - zumindest was die rechtliche Seite betrifft. Deshalb kann er auf jede Aussage der Anklage tatsaechlich und argumentativ erschoeppend erwidern - eine Chance, welche ihr die Prosecution nicht oft geboten hat, da die meisten von ihr erhobenen Vorwürfe an einem krankhaften Mangel jeder tatsaechlicher Beziehung zu dem Angeklagten leiden.

Lassen Sie mich aber zunuechst versuchen, die Atmosphaere fuer eine leidenschaftslose Betrachtung des Verhaltens der I.G. und meines Mandanten auf dem Gebiet der Kartelle zu schaffen:

Das Verhaengnis unserer Zeit ist der Glaube an ein Programm, an ein Dogma. Die Intoleranz, welche manche Begriffe um sich verbreiten, zeugt, dass der Fortschritt der Menschheit auf

Rechtsanwalt Polckmann
Dr. von Knieriem -
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manchen Gebieten seit vielen Jahrhunderten nicht gross ist. Das Erlebnis der Jahre 1933 bis 1945 sollte Dogmatikern und Systemanbetern die möglichen letzten Folgen einer solchen Grundeinstellung gezeigt haben. In solcher Haltung liegen stets zwei Gefahren^{en}quellen: 1) der Anhänger der einen Lehre oder Anschauung kennt die Tatsachen und Überlegungen auf der anderen Seite nicht, je will sie nicht kennen, 2) man sieht nicht mehr den Menschen auf der anderen Seite, seine Absichten, seine innere Haltung, sondern nur noch den Repräsentanten einer Klasse, einer Partei, eines Dogmas politischer, wirtschaftlicher oder sonstiger Art. Die Vermutungstatbestände der Teilnahmereformen in den Absätzen e) und f) des Artikels II, 2 des Kontrollratsgesetzes Nr.10 sind z.B. Ausflüsse einer solchen dogmenfreudigen Geisteshaltung.

Dr. von Knieriem hat sich in der I.C. viel mit Kartellfragen befasst und das bedeutsame als Kartell bezeichnete Vertragswerk auf internationaler Basis mit Standard Oil unter Beratung amerikanischer Kartellexperten geschaffen. Wer die durch Gesetzgebung geschaffene Animosität der Öffentlichkeit in den Vereinigten Staaten gegen "Kartelle" kennt, dem wird es nicht ueberraschen, dass der Mitarbeiter ^{angeblichen} in einer Kartellvereinbarung drueben ohne weiteres im Odium eines Missetaters steht. Sie, meine Herren Richter, kommen aus diesem Lande. Aber ich will diesen allgemeinen Verdacht beseitigen durch den Hinweis auf die verschiedenartige Entwicklung des Kartellge-

dankens in Europa und Deutschland einerseits und in USA
andererseits.

Das europäische Wirtschafts- und Rechtsleben geht vom
Grundsatz der Vertragsfreiheit aus, d.h. jeder Fabrikant
oder Kaufmann ist frei und nicht gehindert, mit anderen
Geschäftsleuten ueber alle möglichen Fragen und Gebiete
Verträge abzuschliessen, z.B. auch ueber die Grundlagen
gegenseitigen Wettbewerbs. Solche Vereinbarungen ueber
Preise, Absatzgebiete, Abnehmerkreise, Produktionsauftei-
lung, Patentausnutzung und dergl. wurden wohlgeübt in
ganz Europa dauernd verfeinert. Die Entwicklung begann
etwa im letzten Drittel des neunzehnten Jahrhunderts und 1933
gab es in Europa etwa 10 000 Kartelle. Davon entfielen auf
England ca. 2500, Deutschland ca. 2000, Polen ca. 250,
Tschechoslowakei ca. 800, Ungarn ca. 260, Schweden ca. 200,
Schweiz mehrere Hundert usw.. In Deutschland schuf der Staat
Zwangskartelle, z.B. fuer Kohle, und zwar unter der republi-
kanischen Regierung im Jahre 1919.

Der stärkste Grund fuer diese Entwicklung war, dass Deutsch-
land arm ist an Rohstoffen und Nahrungsmitteln, was beson-
ders fühlbar wurde nach den ungeheuren Belastungen durch den
Versailler Vertrag. So konnte es sich eine vollkommene freie
Wirtschaft auf manchen Gebieten nicht erlauben. Wir sehen
dieselben Schwierigkeiten heute nach der zweiten Weltkrieg.
Die deutschen Gerichte haben im vergangenen und in diesem

Jahrhundert die Berechtigung von Kartellen anerkannt. In dem Bestreben, die Vorteile deutscher Erfindungen in ausländischen Devisen nutzbar zu machen, welche Deutschland dringend benötigte, begann die deutsche Wirtschaft schon viele Jahre vor der Nazi Herrschaft internationale Verträge zu schliessen, die kartellähnliche Züge aufweisen.

In den Vereinigten Staaten von Nordamerika ging die Entwicklung genau umgekehrt. Dort wurde das Prinzip der Freiheit des Wettbewerbs postuliert. Es fand seinen sichtbarsten Ausdruck im "Sherman Anti-Trust Act" von 1890, mit welchem der Staat Kartelle verbot. Dieser Act wurde als die wirtschaftliche ^{Magna} Charta des amerikanischen Volkes das Symbol wirtschaftlicher Freiheit.

Aber dieses scharfe Prinzip wurde im Laufe der Zeit durch verschiedene Sondergesetze aufgelockert: 1914 durch den Clayton-Act, 1918 durch den Webb-Pomerene-Act, in den Jahren 1922, 1933, 1938 durch weitere Spezialgesetze fuer die Landwirtschaft, Zucker, Oel und Kohle, und waehrend des letzten Krieges noch durch Sonderbestimmungen, wenn die Interessen der nationalen Verteidigung eine Beschleunigung der technischen Entwicklung verlangten.

Immer mehr beginnt sich in Amerika ein deutlicher Wandel in der absolut kartellfeindlichen Haltung abzuzeichnen.

In der World Trade Charter, die unter massgeblicher Betei-

Rechtsanwalt Selckmann
Dr. von Knierim -
Plädoyer

ligung der USA beraten wird, sind Kartellkontrollvorschläge gemacht worden, die nach der Fassung vom Februar 1947 eine erkennbare Annäherung der sich früher gegenseitig ausschliessenden Grundsätze der Vertrags- und der Wettbewerbsfreiheit erkennen lassen. Durch diese Vorschläge soll die Behandlung nationaler Kartelle innerhalb der einzelnen Länder nicht beeinträchtigt werden. Bei der internationalen Kartellverständigung bleibt ein Spielraum für autonome Regelung einzelner Nationen untereinander vor allem im Hinblick auf Exportkartelle.

Bedeutend an dieser Entwicklung ist folgendes: In den neuen internationalen Vorschlägen zeigt sich die Einsicht, dass zu internationaler Zusammenarbeit die Bereitschaft unentbehrlich ist, den Notwendigkeiten einer Verständigung auch mit andersdenkenden Rechnung zu tragen. Diese Einsicht verlangt die Umlenkung der Behandlung des Kartellproblems von einer legalistisch-antimonopolistischen Angriffstaktik in einzelnen in den weitgespannten Rahmen der internationalen Handelspolitik. Im Zusammenprall zweier Welten, der freien und der gelenkten Wirtschaft, stehen wir mitten in der Geburt der neuen Welt. Hier muss sich eines Tages nach schweren Wehen national und international die Synthese ergeben.

Walter Rathenau, der grosse deutsche Wirtschaftler und Staatsmann, hat es nach 1918 so ausgedrückt: "Ohne den Eintritt einer Weltkatastrophe hätte trotz aller Vergew-

lung, Feindschaft und Vernichtung das Gleichgewicht der Wirtschaft noch einige Jahrhunderte fortbestehen können; nun aber werden die Ueberwindungskräfte gereift durch die Not; was die sittliche Not nicht erzwingen konnte, vollendet die materielle. Der Zwang, mit Kräften und Stoffen hauszuhalten, verwandelt den wankenden Gleichgewichtszustand in einen durchdachten und organisierten, und indem der Mensch fuer seine Notdurft zu sorgen glaubt, wird er gezwungen, fuer die Gerechtigkeit zu sorgen." und ferner: "Aus diesen Truemmern wird weder ein Reich des sozialen Kommunismus hervorbrechen noch ein neues Reich freispieler Kräfte."

Gerade die Person und das Werk dieses Walter Rathenau ist ein lebendiger Beweis dafuer, wie wenig die Frage der Kartelle, ihre Befehung oder Verneinung zu tun hat mit der Frage politischer Gesinnung und insbesondere mit dem Nationalsozialismus. Rathenau, der grosse Demokrat und Republikaner, - in der Deutschen politischen Terminologie ist das kein Gegensatz - er, der Repräsentant des pazifistischen Deutschland bei internationalen Verhandlungen im Dienste der Erfüllungspolitik, - er, der Jude, der die deutsche Rohstoffbewirtschaftung im ersten Weltkrieg und danach organisiert, d.h. im amerikanischen Sinne, "kartellisiert" hat, fiel den Kugeln vornazietischer Mordelmoerder zum Opfer. Alles was seinem Andenken galt, wurde von den Nazis nach 1933 ausgelöscht, aber heute im neuen Deutschland gibt es kaum eine

deutsche Stadt, deren Plätze und Strassen nicht seinen Namen tragen.

So glaube ich gezeigt zu haben, meine Herren Richter, dass die Frage der Zweckmässigkeit, Schädlichkeit, ja Strafbarkeit nationaler oder internationaler Kartelle keine Frage eines wirtschaftlichen oder politischen Dogmas ist, sondern sich in ihrer Beurteilung ständig wandelt.

Auch hier gilt in uebertragenem Sinne der klassische Satz des Internationalen Militaertribunals: "Dies Recht ist kein starres, sondern folgt durch ständige Angleichung den Notwendigkeiten einer sich wandelnden Welt. "Ich glaube, wenn Sie sich das vor Augen halten, dann werden Sie frei sein von Vorurteilen und verstehen, wie wahr die Antwort Dr. von Knieriems war, als ich ihn hier als Zeugen fragte: "Legen ausländischen Kartellverträgen der I.G. eine bewusste Kartellpolitik zu Grunde und ist darüber in Vorstand gesprochen worden ? " Er antwortete: "Nein, sicher nicht. Man muss sich einmal klar machen, wie denn so ein Kartellvertrag ueberhaupt zustande kommt. Es geht die Anregung aus von Technikern und Kaufleuten entweder der I.G. oder von anderen Gesellschaften im Inland oder Ausland, ueber irgendeinen Punkt eine vorlaeufige privatwirtschaftliche Regelung zu treffen. Dann kommt man zusammen und verhandelt und sucht nach einer Loesung. Das dauert manchmal wochenlang, manchmal monatelang und dann kommen die Juristen, wenn man fertig ist, und machen den Vertrag, so wie er eben ver-

nuenftig ist nach der klar gegebenen Situation. Wenn man sich die Sache nachher besieht, dann wird es manchmal ein Kartellvertrag sein auch nach deutscher Auffassung. Manchmal wird es nicht nach deutscher, wohl aber nach amerikanischen Auffassung ein Kartell sein und manchmal wird es vielleicht auch nach amerikanischer Auffassung kein Kartell sein, wemgleich diese Faelle solten zu sein scheinen."

Der Wortlaut der Vertrage zwischen I.G. und Standard Oil und die Geschichte ihres Zustandekommens stuetzen in keiner Weise die Theorie der Anklage, dass sie geschlossen seien, um die Kraft der Feinde Deutschlands, insbesondere der Vereinigten Staaten von Nordamerika zu schwachen. Nichts in dem Inhalt dieses Vertragswerks weist in dieser Richtung. Das Eklatanteste ist wohl der Umstand, dass diese Vertrage laengst vor Beginn der Nazizeit abgeschlossen wurden, naemlich 1927 bzw. 1929 und 1930 - waehrend die Anklage einfach behauptet, die I.G. habe schon bei ihrem Abschluss im Einvernehmen mit der Naziregierung gehandelt.

Die Durchfuehrung der Vertrage, insbesondere der dort vereinbarte Erfahrungsaustausch, war naturgemuess nicht Sache von Juristen, sondern der auf dem betreffenden Gebiet arbeitenden Techniker. Das kann angesichts der Art und Weise, wie ein Erfahrungsaustausch sich vollzieht, nicht anders sein. Dr. von Anieriem hat aber von der Durchfuehrung der Vertrage mit der Standard Oil und insbesondere von dem Erfahrungsaustausch einen allgemeinen auf eine Reihe von Beobachtungen

gegründeten Eindruck gehabt und diesen bei seiner Zeugenvernehmung dargelegt. Nach diesem Eindruck wurde der Erfahrungsaustausch beiderseits rückhaltlos und in voller Fairness durchgeführt. Etwas gestört wurde der Erfahrungsaustausch beiderseits lediglich durch die Landesverratsbestimmungen, die einer Ausfolgung militärischer Geheimnisse - also solcher, die fuer die Landesverteidigung von Bedeutung sein konnten - in gewissem Umfang im Wege standen. Deshalb durften beide Partner mitunter ihre Erfahrungen nur mit Genehmigung ihrer Regierungen austauschen. Dies war jedoch auf beiden Seiten der Fall und es bestand deroeber zwischen den Partnern volle Klarheit.

Wegen des besonderen Interesses wird auf den Fall Dunn kurz eingegangen. Der Jascovvertrag liegt dem Gericht vor und kann von ihm selbst beurteilt werden. An etwa sechs Stellen ist in diesem Vertrag darauf hingewiesen, dass eine Regelung dieses oder jenes Punktes erst spaeter erfolgen soll. Dr. von Knieriem hat trotzdem bei seiner direkten Vernehmung den Standpunkt der Anklage akzeptiert, dass der Jascovvertrag als bindender Vertrag anzusehen sei. Dieser Standpunkt erschien ihm der richtige, obwohl vielleicht ein anderer aussichtsreich und prozessual vorteilhafter gewesen waere.

Die Anklage hat ausser der leeren Behauptung nichts dafuer vorbringen koennen, dass die I.G. schon mit Abschluss des Jascovvertrags eine Schwachung der amerikanischen Industrie beabsichtigt oder ueberhaupt andere als rein privatwirt-

schaftliche vernünftige und faire Motive gehabt hätte.

Wegen der Durchführung des Jascovertrages, insbesondere des Erfahrungsaustauschs gilt in erster Linie wieder der Grundsatz: Nur ein Techniker und zwar nur ein Techniker des betreffenden Spezialgebiets kann einen Erfahrungsaustausch vornehmen bzw. dirigieren, nicht ein Jurist. Dr. von Knieriem hat bei seiner direkten Vernehmung den Zeitpunkt angegeben, zu dem der Luna-know-how auf Erdoelbasis der Standard Oil gegeben werden musste. Dieser Zeitpunkt war Herbst 1939. Vorher konnte man noch nicht von einem fertigen, fuer Dritte lizenzbereiten Verfahren sprechen. Nach Ausbruch des kontinentalen Krieges aber war es der I.G. mit Ruecksicht auf die Wanderverratsbestimmungen unmoeglich, diesen know-how der Standard Oil zu geben, da er nach England und Frankreich gefloessen waere. Die Patente sind von der I.G. mit Erlaubnis der deutschen Regierung noch uebertragen worden.

Wenn erst im Herbst 1939 der Zeitpunkt erreicht war, in dem der Luna-know-how gegeben werden konnte und musste, erscheint es vielleicht auffallend, dass unzweifelhaft Teile des Luna-know-how schon fruher gegeben wurden. Dies erklart sich aber zwanglos aus den Umstaenden, wie Dr. von Knieriem eingehend dargelegt hat.

Die wichtigste Erkenntnis zur Verstaendnis der ganzen Entwicklung ist aber folgende: Das Lunaverfahren der I.G. er-

schien zu mancher Zeit in den Jahren vor 1939 fuer amerikanische Verhaeltnisse gar nicht sehr aussichtsreich oder reizvoll. Das lehrte das Interesse der Standard Oil, die deshalb an einer tauschfuehrenden Abgabe des Lerna - know-how gar nicht interessiert war. Wir duerfen nicht in den Fehler verfallen, diese Vorgehensweise typisch ex post zu beurteilen: Wer konnte Mitte der dreissiger Jahre an einen Krieg mit Japan, an die Eroberung von Singapur, der Malaisischen Halbinsel und von Niederlaendisch-Indien und an eine Sperrung der Gummizufuhr nach USA denken ?

Alles in allem war die Auswirkung dieser Vertraege nicht eine tragische Biegung in der Entwicklung der strategischen Industrien der USA, wie die Anklage behauptet, sondern im Gegenteil eine ausserordentliche Verreicherung, Steigerung und Beschleunigung der amerikanischen Produktionsmoeglichkeiten gerade auf vielen strategisch wichtigen Gebieten.

Der interne Entwurf einer Entgegnung der I.G. auf den Haslamischen Vortrag, der die ungeheure Verreicherung des Kriegspotentials der USA durch die I.G.-Vertraege gezeigt hatte, beweist keineswegs das Gegenteil. Er war natuerlich etwas gefaerbt im Hinblick auf den Zweck der Ausfuehrungen, naemlich in einem eventuellen Landesverratsverfahren benutzt zu werden, das den leitenden Leuten der I.G. vor dem nationalsozialistischen Volksgerichtshof im Jahre 1944 drohte.

Rechtsanwalt Pelckmann
Dr. von Knieriem -
Plandoyer

Es liegt in der Natur eines Erfahrungsaustausches, beide Teile zu bereichern und die vorbereitete Antegung der I.G. zeigt naturgemäss mehr die eine Seite, der Haslamsche Vortrag mehr die andere. Die beiden Darstellungen ergänzen sich und geben erst zusammen das der Wirklichkeit entsprechende Gesamtbild.

Welch eine Tragik und Resignation spricht aus den diesen Komplex abschliessenden Worten Dr. von Knieriem bei seiner Vernehmung hier: "Das ist nun einmal eine unvermeidliche Konsequenz jeder internationalen Zusammenarbeit auf technischem Gebiet. Was ein Land in Frieden an technischen Errungenschaften einem anderen gibt, das wendet sich in Kriegsfall gegen das gebende Land, und wenn das eintritt, dann kommen die Vorwürfe und wahrscheinlich immer gegen beide Partner. Jeder bekommt die Vorwürfe seines Landes. Bei der Standard Oil ist es ja auch schonlich gewesen."

Welch eine besondere Tragik, dass nach der Niederlage Deutschlands die Mäenner der Wirtschaft des besiegten Landes sich nun vor dem Sieger zu verantworten haben und gerade wegen des entgegengesetzten Vorwurfs !

Rechtsanwalt Melickmann
Dr. von Knieriem
Plädoyer

Die Prosecution hat nicht den leisesten Versuch gewagt, die Darstellung von Knieriem zu diesen Anklagepunkten zu erschuettern. Diese Darstellung wird gestuetzt durch zahlreiche in- und auslaendische Affidavits, Zeugen und Urkunden aus der damaligen Zeit. Sie stimmt auch ueberein mit derjenigen, die er bereits im Jahre 1945/46 in einer schriftlichen Ausarbeitung dem Chef der Decartelization Branch der US Militarregierung, Control Office IG gegeben hat. Sie koennen sich davon ueberzeugen, meine Herren Richter, wenn Sie das Exhibit Knieriem 12 im Dokumentenbuch III nachlesen. Sie haben aber ein weiteres zusaetzliches Mittel, um unabhängig von der eigenen Pruefung die absolute Zuverlaessigkeit dieser Angaben von Knieriem feststellen zu koennen. Es ist die Aeusserung dieses Chefs der Decartelization Branch selbst, die er unaufgefordert an Dr. von Knieriem im Juli 1946 und noch detaillierter im August 1947 sandte, als er von der Anklageerhebung erfuhr. Es sind die Exhibits von Knieriem 13 und 14 in Buch III. Mr. Louis Lusky aus Louisville Kentucky schrieb: "During those several months I reached the conclusion - which I have not previously communicated to you, or, for that matter, to anyone else - that you are a man of the highest probity. I examined with great care your several reports to me and subjected you to searching cross examination in order to ascertain the existence of misstatements or concealments therein. I also crosschecked these reports, as far as I could, with other sources of

Rechtsanwalt Pelckmann
Dr. von Knieriem -
Plädoyer

information available to me. In no case did I discover any substantial inaccuracy or omission."

Von noch grösserer Bedeutung aber, nicht nur fuer Dr. von Knieriem sondern fuer die grundsätzliche Betrachtung aller Kartellprobleme, ist die folgende Aeusserung dieses hervorragenden Kenners des Kartellrechts in USA: "During that period I also had occasion to discuss with you your views on questions of government policy, particularly in the fields of cartel and patent law, and found that although we were frequently in disagreement, your position was based not on a belief in the totalitarian principles of the Nazi Government but on an enlightened legal philosophy fully consistent with the best traditions of the Anglo-American Bar." Das ist eine absolute Bestätigung meiner vorhin entwickelten Auffassung, dass eine unvoreingenommene Betrachtung dieser Fragen zu einer Achtung auch der Auffassung der anderen Seite fuhren muss und damit zu einer Synthese zum Wohle aller Voelker. Ich bin gluecklich, meine Herren Richter, dass es in Ihrem grossen Lande solche Maenner gibt, die sich nicht identifizieren mit durch Leidenschaft verzerrten Verdachtigungen, die nicht der Massensuggestion einer Propaganda unterliegen, sondern die nuechtern nur die Sache und den Menschen betrachten - und sich nicht scheuen, das zu bekennen.

Nach alledem bin ich der Auffassung, dass umfassender und praeziser der Vorwurf der Prosecution betreffend Schwae-

Rechtsanwalt Felckmann
Dr. von Knieriem
Plädoyer

chung der potentiellen Feinde Deutschlands durch die I.G. und die Teilnahme von Knieriem daran nicht widerlegt werden kann, vor allem, weil abgesehen von den sonstigen Beweisen, die restlose Wahrheit aller Angaben des Angeklagten hier im Zeugenstand feststeht.

Dennoch darf und kann ich einen Umstand nicht stillschweigend uebergehen, der vielleicht geeignet waere, eine imponierbare Wirkung auf die Findung Ihres Urteils auszuueben: Es ist die allgemeine Vorschrift Nr. 2 der US-Militaerregierung vom 5. Juli 1945 zur Durchfuehrung des Gesetzes Nr. 52. Ihre Praesambel lautet u.a.: "Whereas, through its world-wide cartel system and practices IG Farbenindustrie AG, as a deliberate part of Germany's bid for world conquest, harpered the growth of industry and commerce of other nations and weakened their power to defend themselves, it is hereby ordered:..." ("In Anbetracht dessen, dass die I.G.-Farbenindustrie A.G. durch ihr ueber die ganze Welt verbreitetes Kartellsystem und ihr Geschaeftsgehehen als bewusster Teilnehmer an Deutschlands Streben nach Welteroberung des Wachstum der Industrie und des Handels anderer Nationen gestoeert und ihre Verteidigungskraft geschwaecht hat, wird hiermit folgendes angeordnet:")

Nehmen diese Worte nicht schon alles das vorweg, was Sie, meine Herren Richter, mit Ihrem Urteil erst entscheiden sollen ?

Rechtsanwalt Palckmann
Dr. von Knieriem -
Plädoyer

Das Hohe Gericht ist an diese Worte nicht gebunden. Diese Formulierung schafft keine "res iudicata" und ist rechtlich unerheblich.

Das Militärtribunal IV hat im Fall USA gegen Flick u.a. die Unabhängigkeit des Richterspruchs von einer Verwaltungsanordnung in einer ungleich schwierigeren Frage restlos bejaht. Der Artikel 10 der Verordnung Nr. 7 der Militärregierung schreibt vor, dass das Gericht an das Urteil des IMT gebunden sei. Mutis und eingedenk der Pflicht, Gesetze auf ihre Rechtmässigkeit zu überprüfen, stellt das Gericht fest, dass Verwaltungsvorschriften nicht die Rechtskraft schaffen können, wo sie nach den anerkannten Grundsätzen der Gerechtigkeit nicht existieren kann. Das Militärtribunal Nr. IV hat demzufolge erklärt: "Wir werden keinerlei Schlussfolgerungen zum Nachteil der Angeklagten ziehen, gegen die das IMT-Urteil keine Rechtskraft bestesse, wenn dieser Artikel es nicht vorschreibe." (Engl. Prot. S. 10978 vom 22. Dezember 1947).

gibt weitere Worte

Dieser Hohe Gerichtshof hier kann sich mit noch weit grosserer Berechtigung freimachen von der Wortlaut jener Verwaltungsvorschrift Nr. 2, denn er stellt lediglich eine unbewiesene Ansicht dar. Die Vorschrift Nr. 2 ist nicht einmal - wie der Artikel 10 der Verordnung Nr. 7 - an die Militärgerichte hier adressiert. Die in ihr zum Ausdruck gekommene Ansicht der Militärregierung ist nicht unabänderlich

Fall VI

Pleedoyer Rechtsanwalt Pelekreann fuer Dr. von Krierem

Einfuegung auf Seite 25 nach Absatz 2.

Die Gruende fuer diese Ansicht sind einleuchtend: Feststellungen eines Urteils koennen nur gegenueber derjenigen Person Rechtskraftwirkung haben, die an dem Verfahren beteiligt war, das dem Urteil voreuf ging, oder die sich an ihm beteiligen konnte. Inhalt bestimmt das Grundgesetz des Internationalen Militaertribunals, das gemasse Artikel 2 ein wesentlicher Bestandteil des Londoner Abkommens ist, in seinem Artikel 10 ausnahmsweise folgendes:

Wenn eine Person wegen ihrer Zugehoerigkeit zu einer verbrecherischen Organisation vor einem Gericht einer Besatzungsmacht angeklagt wird, so gilt der verbrecherische Charakter der Organisation auf Grund des IMT-Urteils als bewiesen und darf nicht in Frage gestellt werden.

Diese Vorschrift ist ausschliesslich, das heisst also: gegen andere Personen, die am IMT-Prozess nicht beteiligt waren, koennen Feststellungen des IMT nicht bindend sein. Eine Erweiterung des Personenkreises koennte nur durch einen neuen Beschluss der vier Besatzungsmachte, also eventuell des Kontrollrats erfolgen. Das ist aber nicht geschehen. Das Kontrollratsgesetz Nr. 10 verordnet keine Rechtskraft gegenueber anderen Personen als in seiner Art. II gesagt. Eine einfache Verordnung der US-Militaerregierung kann daher das Londoner Abkommen und die Charta des Internationalen Militaertribunals nie erweitern oder abändern. Das muss ganz besonders dann gelten, wenn - wie die Prosecution und einige Militaergerichte in Guernberg behauptet haben - die Gerichte hier internationale Gerichtshoefe sind oder internationale Auftraege ausfuehren. Dann koennen ihre Rechte und Pflichten, die sie aus dem Londoner Abkommen und den Vorschriften fuer das IMT ableiten, nicht einsichtig durch die US-Militaerregierung abgeändert werden.

Der Artikel 10 der Ordinance Nr. 7 ist daher ungueltig.

Rechtsanwalt Palckmann
Dr. von Knieriem -
Plädoyer

und sie wird nicht unabänderlich bleiben. Sie basiert noch auf der bekannten Direktive JCS 1067 der Joint Chiefs of Staff an den US Commander in Europe unter direktem Einfluss des Secretary of the Treasury, Henry Morgenthau. Heute ist der Morgenthau-Plan als ein grosser geschichtlicher, ja trügerischer Irrtum erkannt.

Fuenft Monate nach dieser amerikanischen Vorschrift wurde das Kontrollratsgesetz Nr. 9 ueber die Beschlagnahme und Kontrolle des Vermoegens der I.G. Farben erlassen. Sein Wortlaut spricht nicht mehr von Kartellsystem, sondern nur davon, dass die I.G. "sich wesentlich und in hervorragender Masse mit dem Ausbau und der Erhaltung des deutschen Kriegspotentials befasst hat". Mit dieser Formulierung wird die Frage der bewussten Beteiligung der I.G. an Angriffskrieg offen gelassen. Tatsaechlich hat ja erst ein Jahr spaeter das IMT das Vorliegen eines Angriffskrieges festgestellt. Auch von "Weitereroberungsplaenen, Stoeuerung des Handels und der Industrie anderer Nationen und Schwaechung ihrer Verteidigungskraft" wird in dem Kontrollratsgesetz nicht mehr gesprochen. Dies Gesetz ist von den vier gressen Siegerstaaten erlassen. Die Economics Division der American Control Council Group war an seiner Zustandekommen massgeblich beteiligt.

Meine Herren Richter, durch die eingehende Kritik und Analyse des Beweisergebnisses zum Anklagevorwurf "Schwächung der potentiellen Feinde Deutschlands durch Kartelle, insbesondere Standard Oil und Jasco" habe ich die unbedingte Zuverlässigkeit und Glaubwürdigkeit jeder Aussage Dr. von Knieriems dargestellt, also auch zu anderen Anklagepunkten, und zwar weit uober das Mass der Verrutung der Unschuld und Wahrheit hinaus, das im angloamerikanischen Prozess grundsatzlich gilt und das alle Nuernberger Militartribunale in ihren Urteilen bestatigt haben.

Die Widerlegung der Anklagepunkte Nr. 69, 71 und 73 der schriftlichen Anklage "Tarnung und Verschleierung" und die Aufkloerung der Arbeiten Dr. von Knieriems auf dem Patentgebiet in Verbindung mit der sogenannten "Neuen Ordnung" durch die Aussage Dr. von Knieriems im Zeugenstand und durch die uebrigen Beweismittel, fuer die ich in einzelnen auf den Closingbrief verweise, ist darum ebenfalls unanfechtbar.

Ich hatte am Anfang meiner Ausfuehrungen die Stellung Dr. von Knieriems in der I.G. und im Rechtswesen dargestellt. Wir koennen uns auch in dieser Hinsicht voellig auf das verlassen, was der Angeklagte hier selbst als Zeuge und unterstuetzt durch andere Beweismittel dargelegt hat. Aus seiner Stellung ergibt sich insbesondere, dass er mit

Rechtsanwalt Pelokmann
Dr. von Knieriem -
Plädoyer

bestimmten Anklagevorwürfen nichts zu tun hatte und dazu nur sehr wenig sagen kann. Das sind besonders bei der Anklage der Vorbereitung des Angriffskrieges alle die technischen Fragen der reinen Aufrüstung, z.B. Sprengstoff, Giftgas, Nickel. Die sind in meinem Closingbrief ausführlich behandelt - und ebenso die Anklagepunkte II und III. (Plaub und Pluenderung) und (Sklavenarbeit). Überall hier konnte Dr. von Knieriem auf Grund seiner Vorbildung, seiner Stellung und seines Aufgabenbereichs und in Anbetracht der dezentralisierten Organisation der I.G. nur an der Peripherie des technischen Geschehens stehen, konnte nur wenig davon wissen und kann zwangsläufig auch jetzt in seiner Verteidigung nur wenig dazu sagen.

Ich spreche zur tatsächlichen Vervollständigung dessen, was Herr Kollege von Metzler in seinen allgemeinen Ausführungen zur subjektiven Seite der Anklage des Angriffskrieges so vortrefflich ausgeführt hat, fuer den Angeklagten von Knieriem in Ihr Gedächtnis folgendes zurueckrufen: Herr von Knieriem hat sich in seiner Vernehmung hier geäußert zu der These der Prosecution: "Es genuegt der Glaube, dass durch die Bedrohung mit der militaerischen Macht der Zweck erreicht wird, - naemlich Durchfuehrung einer nationalen Politik der Ausdehnung - obwohl wenn noetig, diese Machtmittel auch tatsaechlich angewendet worden wuerden." Er hat dazu folgendes gesagt: "Solch eine Vorstellung habe ich nie gehabt. Wenn ich darueber nachgedacht haette, waere es

wahrscheinlich die umgekehrte Vorstellung gewesen, dass
nämlich fuer ein schutzloses Land die Gefahr besteht, solch
einem Druck seitens anderer ausgesetzt zu sein. Es spiel-
te bei diesen ganzen Fragen - und das meine ich eigentlich
vorhin - auch eine Rolle, dass man in Deutschland sich noch
sehr wohl an die gegen Italien beschlossenen Sanktionen
erinnerte." Erinnern Sie sich bitte weiter, wie Herr von
Knieriem seine Erlebnisse in Ludwigshafen nach dem ersten
Weltkrieg geschildert hat. Man kann seine Auffassung be-
greifen und man muss sie ihr glauben, denn seine Glaubwür-
digkeit im allgemeinen steht aus dem bekannten schon ent-
wickelten Gründen ausser Zweifel, und auch in der Ankla-
gepunkt Nr. I ist sie durch kein spezielles Vorbringen der
Prosecution erschuettert.

Dr. von Knieriem war nicht von der Naziideologie besessen,
ein Umstand, der von der Prosecution sonst gern zur Ver-
staerkung ihrer These von der Schuld der Angeklagten heran-
gezogen wird. Seine einzige Verbindung zur Partei ist die
der einfachen Mitgliedschaft. Sein Parteieintritt liegt sehr
spaat. Und wieder ist es der Chef der amerikanischen Unter-
suchungsbehoerde auf dem Kartellgebiet, Mr. Lusky, der auf
Grund monatelanger Zusammenarbeit in seiner spontanen Aus-
sagung vom 26.8.47 Exhibit 14 in Band III dazu folgendes
bemerkt: "As I recall, you were a member of the Nazi Party;
but it is my personal opinion, based on my careful observa-

of you during the above mentioned association, that you did not subscribe to its doctrines."

Wie weit entfernt von allen Kuestenfragen Herr von Knieriem tatsaechlich war, beweist die Tatsache, dass er nicht einmal den schmeckenden Titel "Wehrwirtschaftsfuehrer" hatte, obwohl er doch gewiss ein wichtiges und geehrtes Mitglied des Vorstandes der I.G. war. Seine Entfernung von den technischen und kaufmannischen Fragen wird ferner gekennzeichnet durch den Umstand, dass die Prosecution ihn nicht unter den Funktionaeren der Reichsgruppe Industrie aufzuehlt, wohaer nach ihrer Behauptung "Hinsichtlich der deutschen Kriegs Mobilisierung Mobilisierung steht einverstanden" steht sei."

In dem Anklagepunkt II Raub und Pluenderung hat der Beweisvortrag von beiden Seiten ergeben, dass Dr. von Knieriem weder in einem der konkreten Faelle noch in grundsuetzlicher Hinsicht aktiv oder auch nur wesentlich mitwirkend oder beratend taetig geworden ist. Das ist die natuerliche Folge davon, dass diese Dinge ausserhalb seines Arbeitsbereichs als Jurist lagen. Deshalb hat von Knieriem es mit Recht nicht als seine Aufgabe betrachtet, als Jurist solche im Vorstand vorgebrachten Vortraege ueber Erwerbungen nachzuprueren. Solche Pruefungen wuerden ja die Dezentralisation wieder aufgehoben und jede menschliche Leistungsfaeigkeit ueberstiegen haben.

Rechtsanwalt Felckmann
Dr. von Knieriem -
Plädoyer

Dass Dr. von Knieriem solche Erörterungen im TEA oder im KA mitangehört habe, ist von der Prosecution überhaupt nicht behauptet oder bewiesen worden. Dagegen hat die Verteidigung bewiesen, dass von Knieriem in diesen Ausschüssen in der Regel nur wegen und fuer die Zeit der Erörterung bestimmter Spezialfragen in seinem Arbeitsgebiet anwesend war.

Die Prosecution hat auch nicht behauptet und dargetan, dass aus den Vorträgen - soweit sie überhaupt stattgefunden haben - etwas Unrechtes oder Verdächtigendes zu entnehmen gewesen sei, selbst wenn, was bestritten wird, die fraglichen Vorgänge etwas Unrechtes enthalten hätten. Wir erinnern uns wieder daran, dass z.B. der schon erwähnte Vortrag ueber den Vertrag mit Rhone Poulenc durch den Angeklagten Mann im Vorstand nur verhältnismässig kurze Zeit in Anspruch genommen hat, während die Darlegungen des Herrn Mann hier im Stand, die den Vertrag nach allen Seiten durchleuchteten, mehrere Stunden dauerte. Es ist offenbar, dass angesichts der Organisation und Arbeitsteilung in der I.G. ein so intensiver Vortrag im Vorstand niemals erfolgen konnte.

Seinen tatsächlichen und rechtlichen Abstand zu diesen Dingen hat Dr. von Knieriem als Zeuge im Stand auseinanderzusetzen. Von der Prosecution ist auch in diesem Punkte nichts vorgebracht worden, was von Knieriems absolute Glaubwür-

digkeit, die hier wiederholt ueberprueft werden konnte,
erschuettert haette.

Dass Dr. von Knieriem auch auf dem Gebiete der Beschaefti-
gung von Fremdarbeitern, Kriegsgefangenen und KZ-Haefte-
gen nicht taetig geworden ist, mit Fragen dieser Art nicht
befasst wurde, keine Kenntnis von den naecheren Umstaenden
ihrer Beschaffung und ihrer Arbeit gehabt hat und auf Grund
der Organisation innerhalb der I.G. nicht zu haben brauchte,
das ergibt sich schon aus seinen Darlegungen hier im Zeugen-
stand ueber seine Stellung. Zu seinem Arbeitsgebiet, durch
welches auch seine Arbeit im Vorstand bestimmt war, gehoer-
ten nicht Arbeiter- oder Arbeitsrechtsfragen. Weder der
Rechtsausschuss noch die Rechtsabteilungen der oertlichen
Werke hatten mit Arbeitseinsatzfragen grundsaeztlich etwas
zu tun. Das war Sache der Sozial- oder Personalabteilungen.

Die auf seine speziellen Arbeitsgebiete beschränkte Teil-
nahme von Knieriems an den Sitzungen des TEA als Gast beweist
nicht, dass er durch sie eingehendere Kenntnis von Arbeitsein-
satzfragen erlangt haben koennte.

Wiederum darf ich darauf hinweisen, dass auch in diesem
Punkte die Aussagen des Angeklagten im Zeugenstand vollen
Glauben verdienen und nicht im geringsten von der Prosecu-
tion angegriffen oder gar widerlegt worden sind.

Rechtsanwalt Palckmann
Dr. von Knieriem -
Plädoyer

Dr. von Knieriem hat eben keinen Anlass, irgend eine neuere oder innere Tatsache zu verschweigen oder falsch darzustellen. Nie kann aus seinem Verhalten oder seiner damaligen Kenntnis die Folgerung gezogen werden, dass ein Anlass, ein Grund oder ein berechtigter Verdacht fuer ihn bestand, sich in diesen Arbeiterfragen Unterlagen zu eigenen Ermittlungen zu beschaffen und sich nicht mit dem zu begnuegen, was er in den Sitzungen von seinen Kollegen gehoert hatte. Die rechtliche Begrueendung fuer diese Ansicht hat Ihnen, meine Herren Richter, Herr Kollege von Metzler in seiner Plädoyer vorgetragen und sie ist in unserem Closingbrief ueber die Verantwortung der Mitglieder des Vorstandes schriftlich niedergelegt worden.

Weder das deutsche noch das angloamerikanische Recht koennen hier zur Feststellung einer strafrechtlichen Schuld des Angeklaeten fuehren. "Strafrechtliche Schuld aber ist eine personliche." Gegen diesen Fundamentalsatz abendlaendischer Rechtspflege anzukaempfen, - das blieb dem Propagandaminister des Dritten Reichs, Dr. Goebbels vorbehalten. Es gab zwei grosse politische Prozesse im Dritten Reich, in welchen die Nazis diesen Zauberer der Dialektik als Zeugen schickten, um die Rechtsprechung zu beeinflussen. Wir Deutschen Verteidiger erinnern uns noch an sein Auftreten im Reichstagsbrandprozess und in dem Prozess gegen Ingenieure und Unternehmer,

Rechtsanwalt Pelckmann
Dr. von Knieriem -
Plädoyer

die angeklagt waren, fuer den Tod von Arbeitern verantwort-
lich zu sein, als ein im Bau befindlicher Tunnel der
Untergrundbahn in Berlin eingestuerzt war. Es war ein
Schauprozess mit politischem Hintergrund. Man wollte den
deutschen Arbeitermassen, die man um ihre Rechte betrogen
hatte, zeigen, wie sehr die Regierung angeblich um ihr Wohl
besorgt sei. Diese Tendenz wurde ganz deutlich in Goebbels
Aussage vom 11. Juni 1936 die ich las, als ich die Revision
in jenem Verfahren begruendete. Goebbels sagte: "Ich selbst
habe die Staatspolizei beauftragt, die jetzt auf der Anklage-
bank sitzenden Herren ausenblichlich zu verhaften".
"Die Staatsraison erfordert es, dass man ein Exem-
pel statuiert, das den tatsaechlichen Verhaeltnissen Rech-
nung traegt."..... "angesichts dieser Katastrophe habe
ich den unwiderstehlichen Eindruck, dass es sich nicht um
ein Zusammenprallen der Elemente handelt und schliess-
lich forderte er die Verstrafung auch ohne Schuld.

Praktisch fuehrt seine - aus reinen Propagandagrunden - ge-
neusserte Ansicht zu denselben Konsequenzen wie die der Pro-
secution, denn die Prosecution kann nicht nachweisen, dass
- selbst wenn entgegen unserer festen Ueberzeugung irgendwo
und irgendwann Verbrechen begangen worden sind - Dr. von
Knieriem davon Kenntnis haben konnte. Die Stimme des Dr.
Goebbels ist verstuemt, aber der Kampf ums Recht geht wei-
ter.

Rechtsanwalt Falckmann
Dr. von Krieger -
Plädoyer

Ich bin zutiefst davon ueberzeugt, dass Sie, meine Herren
Richter, der Stimme der Gerechtigkeit folgen werden.

Pinna Rosa, Kramich (English)

Case 6
Defense

Final Plea

before the

American Military Tribunal VI in Nurnberg

by

DR. CONRAD BONTTCHER

Attorney in Stuttgart

Defense Counsel

of Professor Dr. CARL KRAUCH

Nurnberg, 2 June 1948

Stung



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FINAL PLEA

We have come to the end of a trial the type and extent of which may be characterized as unique. By submitting 6,545 documents, in more than 15 000 pages of transcript, on 140 days in session, by hearing 188 witnesses, we have struggled to get at the bottom of things. Now it is time to complete the fact finding, with an energy equalled only by the seriousness of the matter and the dignity of the court, and also for the defense to contribute a share in the legal findings and - as was once stated in this trial - thereby to help in coming "out of the woods onto the highway".

What then ~~are the facts?~~ *is the result?*

It is characteristic of this trial that the case-in-chief of the defense begins with an opening statement. By this the defense has become obliged to correlate the results of its case-in-chief with this opening statement and to answer the question which worries the defense day and night: Was not too much said, too much promised in the opening statement? Did we succeed in the case-in-chief in fulfilling the claims made in the opening statement? Dr. KRAUCH, before this court, submitted to direct examination and before the prosecution to cross-examination. Did he measure up, *face to face?* ~~in their eyes?~~ Within the time limits set by the tribunal, which may be explained by the special circumstances of this trial, my final plea gives only a blueprint, if I may characterize it with a German expression often chosen for scientific works,

(page 2 of original)

thus the broad outlines, in which the defense of Dr. KRAUCH sees his case.

All the details are laid down in the Closing Brief, which has been drawn up in such a manner as to allow the tribunal to obtain information quickly whenever it desires to be instructed regarding any one point of the views presented by the defense on the individual questions.

In this final plea, we have dispensed with introducing quotations from the documents and the transcript. My final plea has been submitted in writing; in it, reference is made to every problem dealt with in ^{Final-Pleas (T.C.)} ~~documents~~ in my Closing Brief, in which - in accordance with the suggestion of the tribunal in the session of 13 April 1946 - the incriminating evidence is placed opposite to the exonerating evidence. The notes refer to the marginal notes of the Closing Brief, which are to be found on the left hand margin of the individual pages of this Closing Brief.

In order that the notes may also appear in the record, I request that my written final plea be taken into the record.

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I. Count I of the indictment: Participation in preparation for aggressive warfare.

1.) The IMT judgment forms the basis of the theory of the defense on the question of participating in the preparation for aggressive warfare. According to it, the ~~fact~~^{state of mind} requires the knowledge of HITLER's aims. For Dr. KRAUCH, this knowledge could come from his participation in the 4 known secret sessions or from other sources. For both, the prosecution failed to submit any proof. That Dr. KRAUCH had no close connection with HITLER has been proved. He spoke to him only once, and not until May 1944 on the occasion of the well-known session, ¹⁾ dealt with in the case-in-chief.

Moreover, I refer to the statements of Herr Dr. von METZLER, who treated the application of the principles of the IMT judgment to this case in detail for all defense counsels in the petition of 17 December 1947, and who will once more make a statement regarding this in his final plea.

As a substitute, poor, like every substitute, for the lack of close contact with HITLER and his

1) Footnote 1-5, 6

FINAL PLEA KRAUCH

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intimate circle, the prosecution made the claim that Dr. KRAUCH was "GOERING's right hand", obviously with the intention of inferring Dr. KRAUCH's confidential knowledge of HITLER's plans for aggression from this designation. But even this interpretation is not proved, indeed, it is even refuted in the case-in-chief of the defense. Dr. KRAUCH was so far removed from being one of GOERING's confidants that he saw GOERING only about twice a year and GOERING refuted to him any possibility of a war in July of 1939. A number of witnesses from the circle around GOERING, I should like to refer to HILCH and GOERNERT, confirmed the statements of Dr. KRAUCH.²⁾ Dr. KRAUCH could also not have been one of the initiated for one particular reason, which is the fact that from the outset the judgment of Dr. KRAUCH by the authoritative Party circles precludes any possibility of Dr. KRAUCH's knowledge of HITLER's plans. To be sure, the Party recognized Dr. KRAUCH's great technical ability without reservation, but politically it regarded him with extreme distrust. Abundant proof of these facts has been submitted.³⁾ The cause for this distrust was Dr. KRAUCH's own attitude with regard to the National Socialist ideology and the wishes of the Party, particularly his ^{attitude} ~~attitude~~ with regard to Jews, the church and science. This distrust regarding Dr. KRAUCH

2) Footnote 7

3) Footnotes 8,9

(page 5 of original)

extended to all of I.G. Farben, which on its part, under the management of KRAUCH and SCHITZ, refused, as has been proved, to concede the Party the influence in the Vorstand and Aufsichtsrat which it so very much desired to attain. How far this distrust went is shown by the measure taken during the war, prohibiting Dr. KRAUCH from being informed about the atomic experiments.

As contrasted with these basic facts, the references of the prosecution to numerous details fail to prove anything. No matter how many facets they have, the fact that Dr. KRAUCH had no knowledge of HITLER'S plans for aggression cannot be argued away. Thus, no proof of any sort is furnished by the reference to the participation in the large meetings in December 1936 and October 1938, when many German industrialists were assembled around GOERING and HITLER in order to receive the views of the national leadership concerning the situation.⁴⁾ Furthermore, no proof is furnished by the reference to HITLER'S confidential memorandum about the Four Year Plan, which besides the fact that it does not disclose any intentions of aggression in its contents, did not become known to Dr. KRAUCH until he was in Nuremberg.⁵⁾ This and many other things are details, which indeed show a knowledge of the rearmament and its ~~requirements~~ ^{promotion} ~~which~~ ^{which} Dr. KRAUCH himself does not contest, but which do not prove anything about his knowledge of

4) Footnote 11, 12

5) Footnote 13

(page 6 of original)

HITLER's intentions of aggression.⁶⁾ Along with millions of other Germans, Dr. KRAUCH saw in the rearmament a means of meeting a threat of aggression from the East, and this interpretation was based on the political situation. For example, every sixth German did vote Communist in 1932 and all the propaganda until August 1939 was directed at the Communist menace. I recall the statement of HITLER's radio commentator, Hans FRITZSCHE, acquitted by the IMT, my concluding witness on the question of Common Knowledge of the German people of HITLER's plans of aggression. I recall the speeches of HITLER submitted in the volumes on German foreign policy. Through them all like a red thread is drawn the profession of love of peace and preparedness for peace and from 1936 on, the Bolshevik danger is represented as the thing against which a dam must be erected.^{6a)} How right HITLER was in this outline of his policy, by the way, might be confirmed by the political situation which has developed in recent months in Europe.

How lightly the prosecution takes things here, however, as in so many other points, is shown by a claim in Trial Brief, Part I, page 26; Dr. KRAUCH must have concluded from the fact that the armament of Germany^{in 1938} had exceeded that of the neighboring nations,

-----T2-----
6) Footnote 16

T2
6a) Footnote 16

FINAL PLEA KRAUCH

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that HITLER was aiming for an aggressive war. This interpretation of the prosecution amounts to the following, i.e. if the armament of a country has exceeded a certain limit then this nation is planning an aggressive war. The erroneous nature of this interpretation is apparent; if it were right it would have very strange consequences. Numerous German scientists have been obliged to work in the War Department on the basis of agreements. Dr. KRAUCH also received an inquiry from the War Department with regard to this. From the standpoint of the prosecution, one would have to advise these scientists and also Dr. KRAUCH first to have Mr. SPRECHER give them exactly the ultimate limits of armament, upon reaching which, they must put a halt to their further activities, in order to escape the danger of being indicted.

Moreover, the prosecution still has to prove that Dr. KRAUCH was informed as to the extent of armament of the neighboring nations; in addition to this, however, the defense has proved that numerous experts were of the opinion that the German armament program was insufficient. 7) I refer here only to the testimony of the witness HUIBNERMANN, the Chief of Staff of the ~~Defense Industry and Office for Armament~~ *Military Economy and Armament Office*, whose statement came at the close of my case-in-chief!

I refer furthermore to Vol. 3 of the Documents on German Foreign Policy where I have compiled the statements of 12 Generals and which could be summarized to the effect that:

- 7 -

7) Footnote 17

FINAL PLEA KRAUCH

{page 8 of original}

All of these documents have one thing in common; the decisions which originated in HITLER's brain were not known even to the highest military leaders until the last minute. And it is important for the question of good faith in the statements of the Reich Government that the national Wehrmacht was expressly characterized as a particular instrument of defense and always as an armed force for the preservation of peace. It seems curious in this connection that according to the prosecutions Trial-Brief Part I, page 84, HITLER should have succeeded in deceiving even Poland, that is, the country which was most threatened, regarding his aggressive intentions, while Dr. KRAUCH, of all people, should have perceived the deception. Beyond all this, the defense then - although after the irresolute case-in-chief of the prosecution it would have been superfluous to do so - began a counter-attack, - they themselves now fitting together the pieces of a mosaic picture - by demonstrating that a large number of actions by Dr. KRAUCH were in no way compatible with the object attributed to Dr. KRAUCH by the prosecution of taking part in aggressive wars.⁸⁾ Let me cite a few of these actions briefly; Dr. KRAUCH acted as technical adviser on the construction of the installations under his supervision from a commercial, not from a military point of view. What results this had for the conduct of the war has been shown by the result of the air.

8) Footnote 23-24

(Page 9 of original)

raids on the petroleum plants, Buna plants etc. Iso-octane, important for the development of high-test aviationgas was made available to foreign countries before 1939, while in Germany its production was not begun until after the war had started. Finally, the exchange of experience ⁹⁾ with foreign countries belongs in this category, in particular with Standard Oil in the field of hydrogenation. I wish to draw the attention of the Tribunal particularly to the affidavits of two men, HASLAM and HOWARD, who occupy leading positions in the Standard Oil, from among the extensive amount of evidence covering this field. This evidence completely refutes the claim of count 50 ff of the indictment.

2.) Now, beyond the documentary material, Dr. KRAUCH's knowledge and intent to take part in the preparation of aggressive wars has been concluded from his position in the office for the direction of industry (Amtliche Wirtschaftsorganisation). The importance of this position was inordinately exaggerated by the prosecution. The prosecution has been more than presumptuous, as in so many of its claims, in comparing Dr. KRAUCH to SCHACHT and brought forward as an incriminating fact that he did not immediately, like SCHACHT, resign from his position after he, just as SCHACHT, had become aware of HITLER's aggressive intentions. ¹⁰⁾ How wide of the mark ^{tells} this comparison, ~~tells~~:

9) Footnote 30
10) Footnote 18

FINAL PLEA KRAUCH

(page 10 of original)

The claim that SCHACHT had recognized HITLER's aggressive plans as such is also misleading. The DMT judgment explicitly stated the contrary. Dr. KRAUCH, however, rightly called further attention to the fact that his position could not be compared at all to that of SCHACHT. As Minister, SCHACHT was a member of the Reich Cabinet. SCHACHT was President of the Reichsbank and Reich Minister for the Economy. In his hand, the financing of the entire armament ~~program~~ was coordinated. Dr. KRAUCH, on the other hand, did not hold a position even remotely resembling that of SCHACHT. By no means did he ^{have knowledge of} ~~supervise~~ the entire armament ~~program~~, not even a part of it, not even the entire chemical sector, but only that of the five special chemical problems.

But Dr. KRAUCH may also not be compared with any other of the persons sentenced by the Nuernberg DMT. All were supreme functionaries of the National Socialist regime, all were particularly characterized by the confidence of Adolf HITLER.

SAUCKEL too, was a plenipotentiary general, but SAUCKEL was at the top, i.e., his office was a supreme Reich authority; KRAUCH was not a supreme Reich authority either in his capacity as general plenipotentiary for Special Question of Chemical Production or as provisional director of the Reich Office for Economic Development. ^{10a)} SAUCKEL "directed" the allocation of many millions of workers, KRAUCH did not "direct", but merely "acted" as technical consultant

(page 10 of original cont'd)

and that regarding the need for

10a) Exh. 50
7c

(page 11 of original)

workers for the construction ^{sites} ~~offices~~ entrusted to him. It is not a question of the appearance, of the designation, but of the reality of the authority, and in this connection Dr. KRAUCH made clear his authority by his description on the basis of numerous documents submitted by the prosecution itself, which show his dependence on the decisions and absolute power of other offices, far outranking his.^{10b)} It was indeed a characteristic of the Third Reich in general: to govern with many authorities overlapping, coinciding and holding a subordinate position. Dr. AMBROS put forth the best proof of this, when he demonstrated to us in a diagram how almost innumerable official offices took part in the construction of Auschwitz, consenting, recommending, advising, interfering.^{10c)} In this connection we should also refer to the judgment of Military Tribunal II in Case IV against POHL, where it states on page 8079 of the English transcript:

"At the outset of the testimony, the Tribunal realized the necessity of guarding against assuming criminality, or even culpable responsibility, solely from the official titles which the several defendants held....."

The Tribunal has been especially careful to discover and analyze the actual power and authority of the several defendants, and the manner and extent to which they were exercised, without permitting itself to be unduly impressed by the official designations on letterheads or office doors."

10b) ^{7c} ~~Exhibit~~ 47, 48

10c) English transcript page 7873, German transcript page 7949.

FINAL PLEA KRAUCH

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In connection with portraying the character of other defendants, the Prosecution also attributed selfish and ambitious motives ¹¹⁾ to Dr. KRAUCH in taking over his position, and on the basis of these motives cast aspersions on the whole of I.G. Farben. The defense is of the opinion that here too they have established clarity and have unearthed the real motives. Ambition, selfishness, ideas of Military aggression were not the motives which led Dr. KRAUCH to follow the call which had its origin in GOERING's initiative, not ^{in the} with I.G. Farben, but rather worry about the further development of industry and science, their protection against unpleasant Party influences and worry about finding work. All this according to discussions with the then chairman of the Aufsichtsrat of I.G. Farben, BOSCH, whose commanding personality and anti-National-Socialist attitude has been presented in detail to the Tribunal. ¹²⁾ Dr. KRAUCH correctly called attention to the fact that it was not unusual for an industrialist to step into an honorary government position, and I need only to mention the phrase "one dollar man" in order to convey ^{to the Tribunal} an idea of the circumstances which had an influence upon KRAUCH's decision. ¹³⁾ As the case-in-chief has shown, Dr. KRAUCH was only an adviser and expert in all his positions, without his own initiative, without authority to make his own decisions. This thesis is propounded, not from cowardly

11) Footnote 41
12) Footnote 41
13) Footnote 41

FINAL PLEA KRAUCH

(page 13 of original)

fear of the judgment, hoping to minimize KRAUCH's position and activities contrary to the facts, but because it alone corresponds to the hard facts corroborated by the case-in-chief. From a whole number of prosecution exhibits, Dr. KRAUCH listed a number of points, in his direct examination, which clearly demonstrate the lack of any independent power of decision and the fact of his dependance on the decisions of the offices above him¹⁴⁾

The theory put forth above, that Dr. Krauch cannot be guilty of participation in the preparation for aggressive wars on the basis of his position and activities, also agrees with the judgments pronounced by the other Nuremberg Tribunals.

Military Tribunal V in Case VII, English transcript pages 10, 491-10,502, acquitted the two Chiefs of Staff, General FOETSCH and General von GELTNER, stating that they were only advisors to the commander in chief and had had no power of command of their own. Their knowledge of the existence of illegal actions did not fulfill the requirements of penal law. For this purpose, a person who orders, approves or becomes party to the crime by his consent, is required. Since KRAUCH as well, as his defense has proved, was active not in a decisive but only in an advisory capacity

14) Footnote 42-48

(page 14 of original)

the establishment of his innocence is justified by applying the abovementioned legal principles. This also applies, moreover, to the accusations made in the other counts of the indictment, since there too, KRAUCH was always active only as an expert in an advisory capacity. 14a)

3.) So much for the position of Dr. KRAUCH himself. Only a few words regarding the activities which he pursued as general plenipotentiary for Special Questions of ^{General} Production and in the Reich Office for Economic Development. Through the description of Dr. KRAUCH and other defendants - above all I mean Dr. ter MEER, Dr. SCHNEIDER, - it has been made clear that the activity in the field of synthesis was nothing new from 1933 on, but went back to deliberations, work and preparation which took place long before that year. 15) The prosecution makes the fundamental mistake of seeing the Four Year Plan only from the point of view of plans for an aggressive war. 16) Certainly, the Four Year Plan played a part in the rearmament program, but its most outstanding motives were employment, ^{saving} ~~conservation~~ of foreign exchange, the achievement of an extensive autarchy, and in addition to ^{materials} ~~materials~~ which were also essential to the rearmament program, those of the Civilian Sector played an outstanding role. This aspect of the Four Year Plan has been confirmed not only by a number of witnesses and by the pro-

(page 14 of original cont'd)

secution itself. There are also documents which testify to this, and in particular, contrary to the thesis of the prosecution,

-
- 14a) Footnote 39
15) Footnote 55, 56, 57
16) Footnote 54

HITLER's confidential memorandum regarding the Four Year Plan constitutes no proof for aggressive plans, as a glance at this document itself proves, ¹⁷⁾

Now, as regards the preoccupation with petroleum, Buna, nitrogen, etc., in this connection may I only call to mind the idea of the so-called armament materials common to the trade. ¹⁸⁾ It is known to come from the United-States, and it is the fundamental error of the prosecution that it has seen the production of that type of armament goods common to the trade, i.e., those which are important for peace as well as for war, only from the point of view of the preparation for an aggressive war. Innumerable completely false conclusions of the prosecution have been built on this fundamental error.

In this connection, a word about the hoarding of supplies, which the prosecution also regards only from the point of view of preparation for an aggressive war, should be spoken. As regards Dr. KRAUCH himself, I would like to state here that Dr. KRAUCH had no right in his official position to order or direct stock piling. Moreover, reference should also be made here to the practice in other countries, and finally, the attention of the Tribunal should be called to the fact that at the outbreak of the war, there were only *just* enough supplies

17) Footnote 54a

18) Footnote 55
/f

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~~most the insufficient~~
to ~~meet the~~ armament requirements for a war. If there was only a fifteen day supply of Buna and a six month fuel supply, and powder and explosives as well, only in relatively small quantities - all this has been proved by witnesses - the inference of the prosecution is thus refuted in this point as in all the others.¹⁹⁾

What was true of the Four Year Plan is true also of the Karinhall and the ~~Solms~~^{Rhein} Plan. The prosecution presents matters in such a light as to make both plans seem like something completely new, originating in the evil intent of KRAUCH. In this connection, again documents submitted by the prosecution itself, prove that they were only a compilation of planning for required production drawn up elsewhere, of which Dr. KRAUCH did not even know until then, and that the development of the products compiled in the Karinhall Plan was to take place in peace time.²⁰⁾

The same applies to the ~~Solms~~^{Rhein} Plan, which the experts Dr. EHMANN, Dr. ZAHN et.al., among others have described to us as merely the compilation of the developments planned by the OKH even before June 1938.²¹⁾ Referring to these plans, the prosecution speaks of Dr. KRAUCH's cooperation in the "planning".²²⁾ This mode of expression

19) Footnote 560

20) Footnote 561

21) Footnote 562

22) Footnote 544-46

(page 17 of original)

is inexact and unclear. In German usage, a sharp distinction must be made between:

- a) Planning for required production, thus planning to cover a definite need for gasoline, Buna, powder, explosives, etc., for definite purposes. This planning for required production was never Dr. KRAUCH's affair, but rather the affair of the Reich Ministry for the Economy, the Army Ordnance Office and the Ministry for Armaments and War Production etc.
- b) Subordinate to this in point of time and subject matter, and after the planning for required production comes the planning of construction for the factories which are to meet the requirements ascertained in accordance with a). It includes the expert advice regarding the necessary construction material, machines, the best mode of work, the number and type of workers, etc. KRAUCH was employed only within the scope of this construction planning, as an expert and an adviser.

(page 17 of original cont'd)

4.) KRAUCH's position and activities in I.G. Farben.

Dr. KRAUCH had already discontinued his activities as member of the Vorstand - apart from certain duties in the process of transfer to his deputy - by April of 1936. The directing of Sparte I was transferred to Dr. SCHNEIDER as an acting deputy in 1936, and wholly in 1939. This conduct of KRAUCH originated in his integrity; he wanted to avoid under all circumstances being involved in a conflict of interests in the performance of the duties of his honorary position and possible wishes of I.G. Farben.

(page 18 of original)

In his honorary position he was not the spokesman of the interests of an individual plant, but he had to take care of the interests of the entire chemical industry of the Gebirgschem-Sektor (general plenipotentiary for ^{general} questions of chemical production). This attitude of KLAUCH was established beyond a doubt by the testimonies of the other defendants; especially precise is Dr. ter MEER's statement in that respect:

"In those years I repeatedly heard complaints from my under associates that Dr. KLAUCH had made decisions in the interests of competitors and not in Farben's interest. Therefore I can confirm from this and from my own observations, that Dr. KLAUCH strictly observed the separation between his official business on the one hand and his position in Farben, which was only on paper, on the other hand." 23a)

However also other witnesses, as for instance General von LIEBOWITZ and Dr. SCHIEBER, confirmed Dr. KLAUCH's clear observation of the separation line and his correct attitude. 23b) Therewith, however, also the assertion of the prosecution is refuted which claimed that the I.G. rushed to take part in the Four Year Plan, and that the Directorate of the Four Year Plan and the I.G. entered a kind of alliance for the pursuit of selfish interests. 24) The last doubts in that respect surely were dispelled by the reading of the Basic Information of the Defense by Attorney-at-law SIEGNER, in which it is stated beyond any doubt, that the I.G. did not win any profits out of the Four Year Plan.

- 23) German transcript page 6918
 English, " " 6793/94
 23b) ~~Exhibit~~ 63
 24) " 72 65, 66

(page 19 of original)

The prosecution put forward as a detail of its charge the fantastic figure, that 90% of the personnel of Dr. KRAUCH's office were employees of the I.G. The defense ~~proved back~~ ^{reduced} this fantastic claim to the correct figure of approximately not even 30%. The defense likewise explained why this in itself insignificant number of employees of the I.G. was necessary 25.)

Dr. KRAUCH demonstrated the same attitude of concealment in his capacity as a member of the Aufsichtsrat as he had shown as a member of the Vorstand; From 1940 until 1945 he ~~exercised~~ ^{did not actually exercise} his functions as a member of the Aufsichtsrat ~~only in a honorary capacity~~, a fact which was also proved by the case in chief 26). Apart from this fact, it has to be pointed out that legally speaking, members of an Aufsichtsrat consisting of twenty people cannot be made individually responsible for crimes committed by the Vorstand, because according to German law, neither the Aufsichtsrat as an entity nor the individual members were authorized to issue orders to the Vorstand. If the prosecution would advocate a different opinion then it would not have indicted KRAUCH alone, but all members of the Aufsichtsrat as well.

Again I may be allowed to shed some light on the material which the prosecution has built up with reference to the activity of Dr. KRAUCH in the I.G. The establishing of the liaison office W (V/U), upon which the prosecution dwelled so extensively, has been reduced to its proper proportions already during the ~~case in chief~~ ^{case in chief} ~~speech~~ of the prosecution.

25) ~~Footnote~~ to T2 65

26) " " 67

(page 20 of original)

The V/W was, as testified by a witness of the prosecution in the early stages of this trial, a kind of glorified letter-carrier and not a sinister organization for active espionage, counter intelligence etc. 27) The air-rail protection measures, 28) which were dealt with in this connection, find a natural explanation in the fact of Germany's endangered situation on the mobilization plans 29), war games (Flanspile) 30), and all the other small matters, as for instance the establishment of the department Counter-Intelligence, 31) which the prosecution mentioned in this connection, were only carried out upon orders of the authorities and were considered as annoying in interfering with normal business routine. Referring to all this, I have to bring again on the old subject: i.e. did not other countries and other people act in the same way? Replace ^{the} "imperial chemical" industries for England, or DuPont for America, Montecchini for Italy and at once the similarity will become clear to you. Is it not just a little naive, when the prosecution introduces in this connection exhibit No. 922, which contains a summary report compiled by the V/W concerning British "shadow factories"? It could be pointed out in this connection that this summary was picked up from the material published in English newspapers, to which everybody (!) in Germany had access. The reason for the special secrecy rules and the utilization of the V/W in this connection

27)	Exhibit	T2	68
28)	"	"	71
29)	"	"	70
30)	"	"	72
31)	"	"	69

(page 21 of original)

was explained quite clearly by the Defendant von KUBICKI, as necessitated by the more severe regulations concerning high treason etc.

5.) Participation in the waging of aggressive wars.

Here too no culpability of Dr. KRAUCH is given. A participation in the waging of aggressive wars in his capacity as a member of the Vorstand, or as member of the Aufsichtsrat, is out of the question from the very beginning, particularly because KRAUCH did not ~~exercise~~ ^{perform} these functions during that particular time. Only the question has to be examined whether performance of responsibility in the above mentioned sense could be construed from the fact of his honorary position as Gesandter (General Plenipotentiary for Special Questions of Chemical Production).

This assumption too is denied by the defense just as a participation in the preparation for aggressive wars of aggression. Even the ~~fact~~ ^{state of facts} of the waging of aggressive wars does not exist, because KRAUCH's activity was an insignificant one, insignificant because it concerned not only a relatively but also an absolutely small sector of industry, and because of the fact that in his position he was not authorized to make decisions.

However, the ~~specific intent~~ ^{state of mind} is lacking too, because the prosecution did not furnish sufficient evidence which would prove beyond any doubt that Dr. KRAUCH was absolutely sure that the wars since 1939 were wars of aggression. Our propaganda pictured those wars as defensive wars, especially by pointing out the fact that England and France had declared war on Germany,

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and KRAUCH - like all citizens of Germany - had no opportunity to obtain unbiased and objective information about this problem 32). For the sake of completeness I want to refer here to the well known judgment of the Supreme Court of the United States of 25 May 1931 in the McIntosh case, which advocates the point of view that it never can be up to the individual citizen to examine whether a war in which his country is involved is a just or unjust war. In connection with this judgment, I introduced as the last of the documents which I submitted to the High Tribunal concerning the knowledge of the German people of the intention of waging aggressive wars that one, which contained the statement of General Marshall, declaring that it is the duty of every citizen to fight for his country in case of war, regardless of its causes. Moreover, every kind of activity was placed from the start of the war on under the ever increasing demands and pressure for more production on the part of other authorities and offices, the evidence of which was explained during the trial by numerous witnesses and defendants in a variety of formulations and expressions - was impossible for everybody, if one did not want to endanger life and limb, not only one's own but also that of one's family. 32a) In particular I refer to the statements of Professor R. L. concerning the state of emergency, *emergency*

32) ~~Exhibit~~ 74-77
32a) " 74-77

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II. Count II of the indictment: Plunder and Spoliation

1.) at the beginning I have to bring to your recollection again the actual status of the position of Dr. KRAUCC in the I.G.: From 1933 on he executed his duties as a member of the ~~Verband~~ ~~only in an advisory capacity~~, and as from 1940 ~~he was~~ chairman of the ~~Aufsichtsrat in the same manner~~ 33). Therefore a possible responsibility of Dr. KRAUCC in these counts in connection with the charges made against the I.G. is out of the question from the very beginning.

2.) With regard to the charges made to count II of the indictment, I do not deal with such trifling matters as for instance the trip to Poland by Dr. WUNSTER 34) or the letter of 28 June 1941, 35) written by Dr. AMEROS to KRAUCC, which were introduced by the prosecution, but I turn at once to the question whether the activity of Dr. KRAUCC as member of the Aufsichtsrat of the Kontinentalen Gel. u. G. brought about his original responsibility. Two points are at issue in this question: Firstly, that the Konti Gel. with regard to laws relating to stock corporations, was completely dominated by the Reich Ministry for the Economy, and that beyond it the Reich Ministry of the Economy actually ~~directed~~ ^{supervised} the business transactions of the Konti Gel. by way of orders and directives, so that the Verband had no right of decision. This legal position has been established by affidavits of the former member of the Verband, Blossing and can be deduced also from several prosecution exhibits.

33) ~~referred to~~ 78, 79
34) " 78 80
35) " 78 81c

*F did not actually exercise
FF in the same way, he did not actually act as*

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If it is true that the Vorstand was not at liberty to act as it saw fit, then this was the more true for the Aufsichtsrat which on its part-as already explained in a different connection- had no authority whatsoever to issue orders to the Vorstand (36). Apart from these questions which refer to the organizational set-up of the Kanti Cel, a violation of international law caused by the activity of the Kanti Cel cannot be construed for the very reason that the oil production of the Kanti Cel in Russia was quite insignificant and was not even sufficient for the requirements of the occupation army there. Thus this excludes any violation of article 53 of the Hague Rules of Land Warfare (37).

3.) Through an extensive case in chief, which formed a part of the evidence submitted for the defendants RAUFLIGER and Dr. ILGNER, it has been clarified that for the questions identified by the order of Norway (38) a criminal responsibility of the I.G. is quite out of the question. Quite apart from this, the case in chief for Dr. KRAUCH proved that the boosting of the chemical production potential in Norway cannot be traced back to the initiative of Dr. KRAUCH. Even from the letter of 15 October 1940, written by a certain Herr HUSCHEL, a document which had been given special emphasis by the prosecution and which indicates that Dr. KRAUCH had allegedly intended to bring about the largest possible participation of the I.G. in the later Harding, it cannot be concluded that KRAUCH acted on his own initiative or for selfish intentions, because he refuted this formulation, drawn up by an overzealous

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36) ~~Exhibit~~ 76 81
37) " 76 81
38) " 76 82

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co-worker, at once, with the remark that the quota of the I.G. was fixed by agreements with the Vereinigte Aluminiumwerke etc. as part of the European aluminum production program, and that it never could be increased by more than 10%. 39) Thus this fact eliminates the claim against Dr. KRAUCH by the prosecution. Apart from this, it is a fact that the I.G. never participated in the Nordag. Obviously, it seems to be the intention of the prosecution to punish even a mere intention, which by the way did not pursue any criminal objectives.

Dr. KRAUCH did not participate in the other transactions of the Nordisk Lotestoll, the acquisition of the shares of the Norsk Hydro, which were in French hands, and also not in the transaction of the Nordag itself 40).

4.) The same is true with regard to the Francoeur and Lemoine-Poulenc transactions 41).

Only two transactions of lesser importance remain to be clarified, one of which is known under the code name Simon-Schaubert, more to the culpability of Dr. KRAUCH cannot be established. The expert advisor of Dr. KRAUCH inquired in Dr. Kreuznach at the office of the Wehrmacht, which had jurisdiction over the evacuated territories as to, who had the authority to dispose over the machines and tools in question, and was subsequently directed in that respect to turn to the office for ~~armament and industrial mobilization~~. Thereupon, the sole activity of Dr. KRAUCH consisted in inquiring, upon order of a government agency (the Reich Ministry of Aviation),

39)	Reich	82a
40)	"	82b
41)	"	83

F. Military Economy and Armament.

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at the Office for ~~Research and Industrial Mobilization~~ i.e. at another state authority which was named to him, as having authority to handle of such matters, whether the removal of generators and boilers from the plant located in Marnon's land and exposed to the danger of shelling, was permissible. If now KRAUCH, despite the objections raised by the Foreign Office with regard to stipulations of international law of which Dr. KRAUCH did not learn until he came to Marnon, issued the order for the dismantling, then Dr. KRAUCH cannot be held responsible for it. In the first place the objective connection between the conduct of Dr. KRAUCH and the dismantling of that 310 generator itself was separated by this intentionally and, possibly, illegally issued order of KRAUCH. Moreover, the ~~specific intent~~ is lacking even for the following reason; whoever asks a state authority for the ~~privilege~~ of the execution of a act in measure has to depend upon it that the state authority has examined such a measure as to its legality. 42).

5.) Finally, the dismantling of the nitrogen factory Alaiskill in Belgium has been clarified, apart from other evidence, by the testimony of the witness KRAUCH. The latter testified that the Gabecken had no influence upon the dismantling order as such and that he did not even take charge of the plant; this was done by the Office for Industrial Research (Iris) of the Reich Ministry of the Economy, KRAUCH served only as an advisor concerning

42) ~~Section 24~~

*F. Military Economy and Munitions
FF. State of mind*

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the utilization of L. ch. 9, 43), the dismantling of which was decided upon by other authorities,

6.) For the evaluation of the inner attitude of the man KRAUCH, the defense submitted to the High Tribunal material which indicates that Dr. KRAUCH prevented the dismantling of French, Belgian and Dutch nitrogen factories, planned by German authorities, he demonstrated the same attitude as to the planned dismantling of the valuable laboratory of the Shell Company at Amsterdam and he prevented finally also the incorporation of the German Fordworks which belonged to the American Ford concern, into the Hermann-Göring Werke.⁴⁴⁾

43) ~~2000~~ 72 85
44) - 72 86

Count III of the Indictment: Enslavement and Mass Murder:

1.) As representative of I.G. Farben, Dr. KRAUCH is not to be held responsible on this count. In point of time, the facts under consideration here all took place after May 1940, thus at a time when Dr. KRAUCH was no longer a member of the Vorstand. As a member of the Aufsichtsrat, Dr. Krauch is not responsible for two reasons: first, on the basis of his partial withdrawal from I.G. Farben already mentioned, and secondly because - in agreement with the Trial Brief of the Prosecution, Part III, pp 19 and 23 - Dr. Krauch can not be included under Count III for alleged crimes any more than can the other members of the Aufsichtsrat who are not placed under indictment for this; it is decisive that according to German joint-stock company law, the Aufsichtsrat has only certain supervisory functions, but is not, on the other hand, superior to the Vorstand and has no right to give orders to the Vorstand. I refer to paragraphs 86 ff of the joint stock company law of 30 January 1937. For Count III, then, only Dr. Krauch's responsibility originating in his honorary position as "Gebecker" is to be considered. The prosecution has attempted to prove that Dr. Krauch displayed criminal initiative as set forth in Control Council Law, No. 10, within the scope of labor allocation. The defense is of the opinion that the prosecution has not proved this, that rather the defense has proved the contrary, namely the lack of any real initiative and moreover an irreproachable humane attitude on the part of Dr. Krauch.

2.) For this question, Dr. Frauch first of all described in detail how ~~he~~^{he} was asked for advice ~~from~~^{by} the competent ministries immediately after the beginning of the war, ~~he~~^{he} recommended the so-called utilization of the firms ⁴⁵ in recruiting voluntary workers, in connection with the experience he had had with this type of employment of voluntary workers in the reconstruction of the I.G. Farben plant at Oppau which was destroyed by an explosion in 1920. In the case-in-chief, the favorable experience which he had had with this utilization of firms was illustrated in detail. ⁴⁶⁾ In particular, the extensive welfare program was also proved. ⁴⁷⁾ This so-called utilization of firms does not violate any provisions of international law, no matter how stated. Even the prosecution did not make this claim. ⁴⁸⁾ If it attempts to prove, however, that Dr. Frauch is responsible for compulsory measures, which for example were undertaken in extending the work agreements which were at first voluntarily concluded, or in the breaking of these work agreements, it has failed to bring forth any evidence in support of these claims. The defense has moreover proved that Dr. Frauch as "Gefolge" did everything in his power in order to help these workers as well, in the face of the compulsory measures which did not originate with him, and to enable them to escape these compulsory measures. ⁴⁹⁾

3.) Now, as the war situation led to a further manpower shortage, the so-called slave-labor program came into being with the appointment of SAUCKEL als Plenipotentiary General for Labor Allocation.

45) Footnote 90, 91

46) Footnote 92

47) Footnote 92

48) Footnote 93

49) Footnote 94, 95, 96

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This program will be treated in detail by Herr Dr. Hollnath DDK.

In connection with this, I would like to say with regard to Dr. Krauch:

1) It has been determined beyond the shadow of a doubt that Dr. Krauch did not take part in evolving and formulating the plan to bring foreign workers to Germany on the basis of the compulsory service laws. Quite apart from his own statements with regard to this, it may be seen from the fact that he had no connections of any sort with the Staff of the omnipotent confidant of Hitler, the Plenipotentiary General for Labor Allocation, SAUCKEL, and that he was not on the same level in the official hierarchy as Sauckel, but was on a much lower level, in which connection, the title "Plenipotentiary General" should - as has already been stressed - by no means be misleading, and besides, he had no absolute power and authority, as did Sauckel. Dr. Krauch was completely removed from these things and this program. Indeed, not only that, he himself stated and his colleagues confirmed the fact that Dr. Krauch rejected the compulsory labor program first for ethical, and then for practical reasons. Neither Krauch nor the employer firms could avoid the allocation of foreigners, because otherwise the production pressure and the production quotas could not have been met. It was always explained that priority would be given to German workers, and Dr. Krauch himself, and after him, the witness MILCH, spoke their minds regarding a conflict in the Central Planning Board.

- 30 -

- 31 -

which led to disagreements, when Dr. Krauch, contrary to opposing directives, demanded German workers. 50) The witness SCHULZBERG also recalls a similar incident. Apart from this general frame of mind and attitude, however, any initiative on the part of Dr. Krauch is completely lacking in questions of labor allocation. For the employment of foreign workers under the stress of the compulsory service laws, as well as for the employment of prisoners of war and concentration camp prisoners, the following applies: 51)

First of all, a survey is required of how workers were allocated within the German war economy, and what activities Dr. Krauch performed for this allocation. As has been shown, Krauch did not carry out any construction on his own responsibility. The construction ordered by the Reich Ministry for the Economy, the Army Ordnance Office, the Ministry for Armaments and War Production, etc., as a result of the known quotas, were carried out by I.G. Farben, the Grubig (Braunkohlen-Benzin A.G.), the Hydriowerk Blechhammer AG - I am mentioning examples only. These firms and companies enlisted the workers necessary for this. They were the employers, they were responsible for the well and use of the workers whom they employed, they agreed upon the wage scales, they provided accommodations, food, free-time activities, etc. Dr. Krauch as "Gebecker" and his staff give consultations and advice with regard to the type of construction to be chosen for these edifices - cf. in this connection, Peering's charges in the meeting with Hitler in May 1944, that in this

50) Footnote 98

51) Footnote 88, 97, 98

- 31 -

- 32 -

connection Brauch gave the wrong advice - with regard to the construction of the necessary machines, with regard to the consumption of material, with regard to the deadlines in question; and one of the points requiring advice was also the rendering of a judgment about the use of workers with regard to the number as well as the type (technical workers etc.) The firms which carried out the authorized building on their own responsibility, at their own cost, requisitioned for their part the necessary workers, at first at their local employment office. If this local employment office could not meet the requested need, the firms applied to the Regional Employment Office, and if the latter was also incapable of meeting the request, to the Reich Ministry of Labor, and/or the plenipotentiary General for Labor allocation. Brauch was now called in upon this request, for they would only make available to the individual plant the required workers which could not be obtained locally if the office appointed for this purpose by the highest authorities as experts, that is, the "Gefechen", declared that this manpower need was necessary and in due proportion. In this connection, the "Gefechen" had the same status as a number of similar advisory offices, as for example, the Director of the Economic Group Machine Construction LMG for the machine industry, the Director of the petroleum department of the Regional Geological Institute, Professor BÄNIS, for natural petroleum.

An especially good example (instead of many others) for the correctness of the above description is enclosed Exhibit 114 (Document 417, Document Book IV, page 38). There in the minutes of a discussion at the Regional Employment Office Kattowitz it states:

- 32 -

- 33 -

For i.e. the plant Auschwitz, desires in regard to the allocation of labor were presented to Army President Dr. CRUICKSHANK, and it is interesting to note from these minutes further the specification requesting German workers, for at the end the statement is made: "The Regional Employment Office promised every conceivable aid, in particular in obtaining the requested 3,000 German workers, in order that the Regional Employment Office would not be burdened with further requests". One could not prove the actual situation of labor allocation more clearly than by this document, which is only an example for many.

If one keeps in mind these simple and clear outlines, the following results for Dr. Krauch's position ⁵²⁾:

By no means can it be said that Krauch himself had the choice of a certain category of workers, whether foreign workers, prisoners of war or concentration camp prisoners, or that he himself had decisive influence on the distribution of a certain category. The tiny sector of the "Gefechen" within the scope of the millions in the armament industry, with its worker requirement of 150,000 to 200,000 men, of which about 10 to 15% was always lacking in order to meet peak demands and not to be met, had to be supplied, just as did the requirements of millions on the part of the military decisive armament industry (cf. prosecution exhibit 2239, Doc. Book 94, p. 37) from the large general reservoir in Duckel's care; these labor allocation authorities alone had the decision and authority regarding the type of employees who were to be allocated to the individual construction enterprises.

52) ⁷² Documents 88, 97, 98

These very facts prove that Krauch's activities in matters of labor allocation could only be of an advisory or consultant nature and that this opinion is not being stated in order to minimize Krauch's position and - contrary to the actual facts - to deny that he could take the initiative which the prosecution claims to be the basis for its opinion.

This position of Dr. Krauch has been proved and substantiated through many details, partly as listed in the prosecution documents themselves as well as in the direct examination and through other evidence. ⁵³⁾ I want to point out especially that this merely consulting and advisory nature of Dr. Krauch's activities was also proved through the fact that the authorities superior to Dr. Krauch were not only in a position to take measures which were in opposition to his advice and his expert opinion but that they actually did take such opposing measures. ⁵⁴⁾

I will now take up the question as to whether Dr. Krauch is liable to punishment because of the inhumane treatment of so-called slave laborers. Dr. Krauch's defense is of the opinion that Dr. Krauch is not responsible for the treatment of the workers for the simple reason that - as has already been emphasized - he was not the employer. Labor conditions were fixed by the individual plants and by the persons responsible for this task within the plant. The prosecution failed to submit proof that Krauch is responsible for any treatment of foreign workers which violated human dignity.

⁷²
53) ~~Exhibits~~ 88, 97, 98
54) ~~Exhibits~~ 88
⁷²

In addition to this, several other defendants, especially Dr. SCHNEIDER, Dr. AMBROS, Dr. WUSTER etc. have submitted extensive proof that any treatment that would have violated human dignity was absolutely out of the question. Krusch's attitude, on the other hand, is characterized by the fact that, although he was not a responsible employer, he nevertheless supported all measures connected with welfare in the plants to which he was assigned as an adviser and that for ethical reasons he gave many suggestions for social and human care, often - and this should be especially emphasized - contrary to the ideas of the party authorities. He has submitted extensive material in order to substantiate the evidence submitted by the individual plant leaders of I.G. Farben who are accused in this trial. 55)

b) with regard to the allocation to labor of prisoners of war

the evidence clearly revealed that Dr. Krusch's activities were in no way the cause for the assignment of prisoners of war, which would, incidentally not even have constituted a punishable offense. Besides, the prosecution failed to submit evidence that prisoners were used in any way for work which would not have been in agreement with international provisions. The labor authorities and the Wehrmacht were the only ones to decide about the labor assignment of prisoners of war, as proved by the material submitted in the document book, it was the Wehrmacht which alone advised whether the assignment of prisoners of war was carried through in a manner permitted by the provisions of international law. 56)

55) ⁷²Footnote 99
56) ⁷⁴Footnote 100

The prosecution used as a basis for an alleged offense on the part of Dr. Krauch a letter which a co-worker of Dr. Krauch, Kirschner, had sent to General Thomas on 20 October 1941 and in which Dr. Krauch recommends the assignment of Russian prisoners of war in the "armament industry". During the examination of Dr. Krauch, which was substantiated by testimonies of the witness Kirschner and several affidavits, a sort of chronological chart demonstrated that this suggestion of Dr. Krauch, which - as testified by his co-worker - was incidentally the result of human deliberations could not have been the cause for any assignment of Russian prisoners of war which allegedly violated international provisions (though such violation was not proved). 57)

All other charges of the prosecution concerning this subject, especially prosecution exhibits 481⁵⁸⁾, 1371⁵⁹⁾, and 1845⁶⁰⁾, should be mentioned here only in so far as they too, do not prove any criminal actions on the part of Dr. Krauch, as for details⁷ refer to my closing brief.

Upon request of all defense counsels I have submitted a document book dealing with the questions of the allocation and the treatment of prisoners of war, which I have submitted during the session of the Tribunal of 4 May 1948^{5C1)}. The excerpts from commentaries for the interpretation of the respective provision of the Geneva Convention; the legal regulations concerning the legal situation in Germany, decrees of the Reich Minister for Labor, orders by Goering concerning the assignment of Russian prisoners of war speak for themselves.

57) Footnote 100a

58) Footnote 101, 104

59) Footnote 105

60) Footnote 102

60a) German transcript page 13655, Engl. transcript pg. 13357.

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the same holds true for 2 affidavits which I have introduced with regard to the question as to who was responsible for the enforcement of the provisions governing the commitment of prisoners of war in accordance with the rules laid down by international law. It was the Government and the officers which it appointed who had to supervise this commitment in all details particularly with regard to its legality under international law. I wish to draw the attention of the High Tribunal particularly to that part of the German regulations which declared the employment for construction and plant work in Buna and in hydrogenation plants permissible. Attorney-at-Law Dr. SEIDL will discuss in his final plea further details in connection with this question.

c) Now to the question of utilization of concentration camp inmates:

The prosecution regards as evidence for a criminal initiative on the part of KRAUCH the fact that the so-called GERING Order of 18 February 1941 No. 1417 - which was addressed to REICHER listed as the first of the recipients of a copy - in addition to three others who held positions of much higher rank to judge from their standing and authority - in the name of Dr. GERING, still, the fact that somebody gets a copy for information does not permit to draw the conclusion of initiative. Dr. KRAUCH in his part has proven that both from a general point of view and especially in the case of Auschwitz he was against the utilization of concentration camp inmates, and we have not only his testimony, but also that of the witness GERING who described that this order came about because Dr. KRAUCH, in contrast to REICHER, held the view not to use concentration camp inmates.

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to further have the testimony of his assistant 61).

Dr. KRAUCH's action to communicate this order to the I.G. Farben 62) is as little punishable as an identical occurrence which was decided in Case VII (South-East).

There, the Chief of the General Staff of an Army who had not only passed on, but even drafted, an order which violated international law, was not held liable to punishment; see English Transcript pp. 10500/01.

For own original initiative on the part of Dr. KRAUCH with regard to the utilization of concentration camp prisoners be proved by referring to other charges of the prosecution.

This basic fact cannot be influenced either by a number of details which the prosecution has introduced as evidence for an alleged ~~original~~ initiative, such as the letters FOHL-HEIM, STUBB, KRAUCH etc. I shall discuss these details in my Closing Brief 63).

Quite apart from the question of initiative, it must be noted that in the findings of the other Nuremberg Tribunals employment of concentration camp inmates was not held a criminal offense. May I point out the opinion in the FLICK Judgment and may also call special attention to the statements of Judge Michael W. MOSKOWITZ in the FLICK Judgment where he says explicitly to the charge of barbarity on the part of the defendant the utilization of concentration camp inmates for work, but that useful employment is preferable to inactivity in captivity:

61) TZ 106, 107

62) TZ 107

63) TZ 108, 111, 112, 113, 114, 116

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"Concentration camp inmates were used for work and no charge of barbarity can be raised against this. Yes, useful employment is to be preferred to inactivity during captivity" 63-).

bb) As far as the treatment of concentration camp inmates is concerned, which the MILCH Defendant was justified in holding wrong, the prosecution has offered no evidence to prove that KRAUCH knew about such disgraceful treatment. The same applies to a knowledge on KRAUCH's part of the tests on human beings and other atrocities in the Auschwitz concentration camp.

Dr. KRAUCH has left no doubts that he had investigated the rumors about the treatment of concentration camp inmates and about atrocities in concentration camps. He described in a credible manner that the result of these investigations had been negative, and in one of the very last days of this trial the correctness of KRAUCH's claim was substantiated by the witness MURCH. In addition, the defense has tried to present further proof for the veracity of Dr. KRAUCH's claim that he knew of no such incidents. In accordance with the 1st principle "Negative non sunt probanda" the defense cannot offer direct counter-evidence. But it has offered evidence with regard to Dr. KRAUCH's ethical approach in a case which was completely identical. Although entirely outside his jurisdiction, Dr. KRAUCH intervened with all the authority of his command and in a very impressive manner in the so-called shleim, the case in Montfermeil.

630) P. ~~16~~ of the dissenting opinion.

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Apart from his statement, detailed affidavits are available on this question.⁶⁴⁾ Dr. KRAUCH thereby has proved that he intervened in another case, which had no connection with the I.G. Farben case, as soon as he learned about inhumane conditions, and the defense, therefore, deduces that Dr. KRAUCH's claim, that he would have taken action if he had known about what went on in Auschwitz, is true. The defense would not like to suspect that conclusions unfavorable to Dr. KRAUCH will be drawn from his decent attitude which was proved in the Schenck case.

Dr. KRAUCH raised his voice against disgraceful conditions, he offered resistance. How dangerous such an attitude was has been described by many witnesses. Contrary to all expectations nothing happened to Dr. KRAUCH. It can of course be followed that Dr. KRAUCH was in a position to offer a certain measure of resistance. One thing, however, is decisive: The opposition was not directed at the basic problem but only at the manner in which the utilization and treatment of concentration camp inmates was handled. It probably appeared also to KRAUCH as suitable to treat concentration camp inmates somewhat humanely in order to comply with production quotas and ease the pressure of production; but this example offers no proof concerning the question whether opposition could be risked without danger to life and finally against basic orders and directives which concerned the extent of war production, meeting of production deadlines, etc. All experts who have been heard on this point also in this trial agree that

64) TZ 117

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such opposition against the "whether" was impossible; and as is self-evident, such opposition could not be tolerated by the government because the government was unable to permit any opposition whatsoever as far as pressure on production and production quotas ^{was} ~~was~~ concerned in view of the bottleneck in the manufacture of innumerable war-essential products which was proved in this trial.

Thus I come to the conclusion of my discussion of the various facts, offered both by the prosecution and the defense, with regard to Counts I - III. In summarizing, I arrive at the following result: Dr. KLAUCH doesn't belong at all in this dock.

As I have clearly proved, he obviously no longer had any close connection with the I. G. Farben after 1936. Thus there was no basis to indict Dr. KLAUCH in connection with the I.G. Farben.

Nor was there any reason to make him a defendant because of his honorary position in the government economic organization since his position was far below the level which is of interest to the High Nuremberg Courts. In the IMT the defendants were cabinet members and specially outstanding confidants of HITLER. Dr. KLAUCH by no means belonged to this category.

In the so-called Ministries Case there is no place for Dr. KLAUCH among the defendants, since these are only high government officials down to Under State Secretary, a rank which Dr. KLAUCH did not reach by far. ^{64c)}

The correctness of this conclusion -

64c) Tz 118

is also evident from the fact that none of the other Plenipotentiary Generals - with the exception of Sawakal^{64b)} who, as was shown, held a special position, was indicated although a number of them held actual powers in contrast to Dr. Krauch.

- IV. To round out the picture which I was permitted to present to the High Tribunal, it is only necessary to discuss a few points about the man Krauch. In line with his attitude of reserve, he refused in the direct examination to say anything in this respect. It thus was left to the defense to prove his humane by introducing a number of documents. This was done by explaining his attitude towards Jews and Half-Jews⁶⁵⁾ whom he saved from persecution by the Nazis, whom he helped with the full weight of his personality. Undaunted he held to the Church and its institutions, although this might have led to persecution in the Third Reich⁶⁶⁾. Moved with emotion renowned scientists described how he defended the freedom of science against adverse party tendencies which were energetically supported, how he also stood up for persons who had fallen in disfavor with the Nazi regime⁶⁷⁾. He did all this in taking advantage of his honorary position without which such comprehensive assistance would have been impossible altogether.

64 b) T2 48a
65 } T2 9 b
66 } T2 9 c
67 } T2 9 e

And finally we have proved a number of facts which I find essential when evaluating the men Krauch. Dr. Krauch was one of the few who, when he heard of the humiliating treatment of concentration camp inmates had the courage in the face of personal danger to offer resistance, when he described these conditions to Pohl as "a disgrace to our culture" and asked remedy to the situation. He is one of the few who could prove that he investigated the rumors about disgraceful treatment of concentration camp inmates and atrocities in concentration camps; he cannot be blamed if the result was negative; this was due to the general situation, about which I refer to Dr. Muench's testimony. And finally we have proved, how at the end of the war, Dr. Krauch, also in the face of personal danger acted against the orders which purported to destroy the last semblance of civilization which had already been seriously shaken by the war.

End of page 42 b.

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The picture is clear, the line is drawn; are there any doubts left, Your Honor? Now then, let me testify in behalf of Dr. KRAUCH. I stand up for him, he is no war criminal, he is not a man who approved of the concentration camps, str cities, no narrow-minded party man, not a man who participated in the slave labor program, but a man who remained faithful to his career as a scientist and to his conviction toward true humanitarianism. Believe me, when for an entire year you are together almost day-in day-out with a man you learn to distinguish between the things that are genuine and those which are
But a pretense, between true and false, inner values and facade. For no nothing was more helpful to enlighten the situation than the statement by the President of Standard Oil, Eastern, already quoted, when at a time when a flood of hatred and insinuations is being hurled against the I.G. Farben, and the accused to pay tribute to the high standard of business ethics of the I.G. Farben, and who in this connection singled out particularly the name of Dr. KRAUCH.

Contrary to the German custom in the procedure governing criminal trials, the prosecution upon an instruction by the High Tribunal speaks after the defense. Therefore, I cannot foresee in what time the prosecution will deliver its plea. Regardless of the way in which it will compile it, regardless of the form in which it will present it, I have assisted from indulging in any generalizations, or exaggerations which the prosecution chose in its opening statement, trial brief and other occasional statements. I was thereby mindful of the words which the President of this Tribunal

68) T-90

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so often used in this courtroom, "Come to the point in your questions, ask single questions", and thus I have tried in line with Mr. KLAUGH's and my nature to handle and describe things in a direct and simple manner. Behind this simple formulation, however, is concealed an ardent endeavor and a struggle with this overwhelming material which the prosecution caused us to arrange and to explain. It was necessary to present it along plain, practicable lines in order to make it easier for the High Tribunal to find justice. It would be the reward for this ardent endeavor if also the result of your examination, Your Honors, would be: This man is not guilty!

CERTIFICATE OF TRANSLATION

29 May 1948

We, Leslie H. Lawton, William Zirkl, and Elizabeth A. Johnson,
hereby certify that we are duly appointed translators for the
German and English languages and that the above is a true and
correct translation of the FINAL .LEA ABAND.

Leslie H. Lawton
B-397990

William Zirkl
B-397928

Elizabeth A. Johnson
B-397926

Finne Pusa, Kuorhne
(Gorish)

Case 6
Defense

FINAL PLEA

by

Dr. Herbert F a t h
Attorney - at - Law

before the

American Military Tribunal No. VI

in case 6 :

Karl F r a u c h et al.,

on behalf of

Dr. Hans F u e h n e

Nuremberg, June 1948

Stang



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Mr. President, Your Honors,

On the right bank of the Rhine in the close vicinity of the venerable and once so happy city of Cologne, rise the extensive plants of the Leverkusen Works of Farbenfabriken Bayer & Co., which belonged to I.G. Farbenindustrie Aktiengesellschaft. I have taken it upon myself to describe to your Honors the person and weight of responsibility of the man, who until the middle of 1943 held the reins of the management of these works, and against whom the Prosecution deems fit to bring charges. Here in Leverkusen is situated one of the most important dyestuff factories which later on made known the name of "I.G. Farbenindustrie". The history of these works is to a great extent also the history of I.G. Farbenindustrie, and the men who worked there have made a decided contribution to the development of what was to become one of the greatest chemical enterprises in the world. Therefore, it seems to me necessary for the purpose of arriving at a just judgment, to give Your Honors in a few words a survey of the creation and growth of the Leverkusen Works. You should not overlook the fact that in Germany there are traditional sources of knowledge which show how close was the attachment of the entrepreneur to his factory, and which to a great extent determine the views and actions of all factory members, especially of its leading persons.

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Eighty-five years ago, on 1 August 1863, the foundation was laid for the work to be carried out by many thousands of people in the plants at Wuppertal-Elberfeld, Leverkusen, and Dirmagon. On this day Friedrich Bayer and Friedrich Wesscott founded the firm Bayer & Co. in Barmen. For the first few weeks only one workman was needed; then three more were engaged. "Three at a time", as an old veteran worker from that time admiringly puts it. The firm produced aniline dyes, chiefly Fuchsine. The many Wuppertal dyers gladly bought these new dyes from their enterprising fellow-countrymen, provided they were cheaper than the French and English ones. The first aniline dyes were not all good. It was considerably easier for the English and French manufacturers. England had the largest gas and acid plants in the world, which supplied unlimited quantities of tar, acids, and alkalis at cheap prices to the home dyestuff factories. France was in a similar position. In Germany only a few poor attempts had been made. Within a few years, however, the German dyestuff factories were to succeed in outstripping the French dyestuff production and in gaining a considerable advantage over the English products by the invention of alizarine. A German scientist had discovered a process by which alizarine, the coloring substance of a plant, could be derived from hard-coal tar. In the science of organic

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chemistry the Germans had gained the ascendancy. Professor Liebig at that time was lecturing in Munich, Wöhler in Göttingen, Hofmann in Berlin and Kekulé in Bonn. The remarkable thing was that these men made the young chemists familiar with the ideas and methods of research at the university laboratories. At that time no such thing was known abroad. The brilliant rise of the German Chemical Industry is to be attributed to the alliance between technique and science. Within a few months the chemists had improved the method for producing alizarine in German factories to such an extent that Germany was able practically to double the production of dyestuffs as compared with England and France together.

It was alizarine which gave the impetus to Bayer & Co.'s start. An alizarine factory was set up in Elberfeld next to the Fuchsine factory. But the founders of the firm did not live to see the brighter future. Both died when only 55 years old. After their deaths the firm was converted in 1881 into a joint stock company (Aktiengesellschaft), the Farbenfabriken vormals Friedrich Bayer & Co. At the head of the Aufsichtsrat (Supervisory Board) was Carl Rumpff, a son-in-law of Friedrich Bayer, and the sons of the founders formed the Vorstand (Executive Board). They were energetic young men. The eldest was Carl Rumpff, who was 42. But keen competition made the further development of the enterprise difficult; it could not keep pace with other big German works. It was Carl Rumpff who was responsible for the

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closer contact in the dyestuff factories between technics and science. He engaged three young chemists and sent them at his own expense to different German technical colleges. One of these was Carl Duisberg. The name of this man has been repeatedly mentioned in the course of this trial. In 1884, on his 23rd birthday, he took up his activities in the Elberfeld dyestuff factories. Within 14 months he reported no less than five inventions. Two of them defied all competition viz. "Benzopurpurine" and "Benzoazorine". These belonged to the class of the azo dyestuffs, which make it possible to dye cotton without the previous use of mordants. The plants, workshops and offices now expanded. The firm Friedrich Bayer rapidly caught up with the others. But this mass of work had to be directed into the right channels and properly organized. It is in this field/^{perhaps} that Carl Duisberg achieved most. He was a born organizer. There is no branch of the dyestuff factories, with their manifold ramifications and world-wide activity, which sooner or later was not conceived, and shaped by him and which did not bear the stamp of his spirit. At Duisberg's suggestion work was started in the field of synthetic medicaments which had just been opened up. The very first product of the dyestuff factories viz. Phenacetine, was a complete success. When the dyestuff factories celebrated the 25th anniversary of their foundation, they were employing about 1000 workers and mechanics.

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The next decades saw an amazing expansion. The sales grew, and production was enriched by a great number of dyes and medicaments. Boettlinger, a brother-in-law of Bayer junior, started on his great voyage of publicity which led him to the Far East and to North America. The effect of his activity soon became manifest in the considerable increase of the export business. Bayer's name became well known in the field of medicaments. Before the close of the century Phenacetine was followed by the aspirin "Salphenal" and "Trianal", the tonic "Serratose", and "Aspirin".

Elberfeld became too small for these manifold activities. In the early nineties the firm acquired a vast terrain near a small peasants' village not far from Cologne. The factories of Aktiengesellschaft Friedrich Bayer & Co. were moved to Leverkusen. They were set up according to the well-thought out plan of Carl Duisberg, and even to-day their lay-out is regarded as a pattern of suitability and arrangement. On this wide stretch of land, which provided space for this unprecedented development, spread over nearly 60 years, there was created a proud centre of work and of life in which all members were closely linked with the factory. The factory management has always adopted the principle, apart from the pursuance of purely economic interests, of looking after the welfare of its workers and employees, and performing thus social and ethical duties of the most varied nature.

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This principle was adopted especially by Leverkusen, as the factory was erected in an area which until then was only thinly populated, the most important problem was to provide good and cheap living quarters for the large number of workers. Today there are several settlements containing over 4000 apartments belonging to the plant, as well as extensive gardens and playgrounds. As early as 1898 a pension fund was established. In 1908 the building of a recreation centre was completed, which was the center of the social life of the workers in Leverkusen. In 1912 a large factory club-house was opened, and, in the course of time 120 well furnished recreation rooms were set up in the plant itself. These were connected with dressing rooms and bathrooms. In 1905 a maternity home was opened in Leverkusen under the supervision of a doctor. At about the same time a housekeeping school was established, in which the sons and daughters of workers were instructed in many practical subjects. The workers received medical treatment in a clinic fitted with modern equipment and Carl Duisberg had two large parks laid out for the recreation of the workers and employees. There was even a large swimming pool and tennis courts which could be used by all members of the plant.

Your Honours, I mention all this in order to show you that it was an old tradition in the I.G., especially in the Leverkusen Works, to care for the members of the working staff. I beg you to bear in mind this fact, when in the course of my further

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statements in answer to point III, I shall have to describe the lodging and the treatment of the foreign workers employed in Leverkusen during the last war. I could still name a great number of other social institutions, such as convalescent homes, club-buildings, and numerous funds, which were all for the welfare of the working staff. What is more important, however, is that I should convey to you an idea of the kind of spirit that ruled in this plant at the time when my client Dr. Hans Kuehne was appointed as the manager of the Leverkusen plant in January 1933.

What kind of man is this Dr. Hans Kuehne, who entered the services of the Farbenfabriken, formerly Friedrich Bayer & Co., on 16 February 1916 - 32 years ago - as a chemist?

While still a student Dr. Kuehne had made an invention which was the means of his obtaining a good position as assistant to the plant manager in the Chemische Fabrik Marienhutte am Harz in Thuringia. This young man of 26, who was born in Magdeburg, already in his first job showed that he was in sympathy with the workers. When later on he took the part of a worker, who had been active in the Social Democratic Party, and when Kuehne himself attended social democratic meetings, - in 1916 for a man in his position to do such a thing was generally considered outrageous - differences arose between Kuehne and his chief, which resulted in his having to leave. After holding several posts in chemical firms, some of them executive positions,

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he found himself faced with the interesting task, which had been set him in Leverkusen, of putting into practice a process which had been developed by Prof. W.J. Mueller in the laboratory, by which sulphuric acid and cement could be obtained from gypsum and clay. After two years hard work he succeeded in solving the problem and in establishing the process as the Mueller-Ruesch Gypsum - Sulphuric acid Process. To exploit this process a large plant was built by the ICI in Billingham, England; another was erected in St. Chamas for the government powder plants in Southern France. Dr. Hans Kuehne presented the rare combination of a highly gifted chemist and a man with a keen sense of social duty towards the workers, which predestined him to become the manager of the plant. Leverkusen, which it was his task to manage, is one of the world's most diversified chemical plants. There are more than 200 separate factories, in which, apart from dyestuffs, a large range of products of anorganic chemistry are produced. You have there a factory for photographic paper, plants for making synthetics, pharmaceutical products, a research laboratory for developing Buna and various other scientific laboratories and technical departments connected with it. My client, when in the witness stand, compared his position with that of the head doctor of a large hospital, thus showing clearly that while it would have been impossible for him to have an expert's knowledge and to be responsible for the details, his tasks did embrace the

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management of the entire plant, and for this he bore the full responsibility.

Count I

A few weeks after my client had taken over the management of the plant, Hitler became Chancellor of the Reich. Thus commenced a period destined to set difficult tasks for the manager of such a plant. The Prosecution has attempted to produce evidence in these proceedings that the indicted members of the Vorstand of the I.G., among them Dr. Kuehne, had collaborated with National Socialism, being fully aware and conscious of the fact that Hitler would attack other nations in a war of aggression. In its statements, the Prosecution goes so far as to claim that the perception of the aggressive intentions of National Socialism would have been possible as early as the beginning of the assumption of power, and claims the fact of membership in the National Socialist Party to be circumstantial evidence for the planning and preparation of aggressive warfare. I will confine myself to pointing out that the Prosecution's argument is diametrically opposed to the opinion of the International Military Tribunal, and I do not think I need repeat the legal arguments which my colleagues have already submitted in detail to the Tribunal. What I do especially refute here, however, is the assertion that - as the Prosecution once expressed it - every sensible man in Germany did know,

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or must have known that National Socialism was planning to engage in aggressive warfare. In support of this argument, we were shown a picture, fashioned of small stones like a mosaic. Here everything is depicted, commencing with the Party Program, then taking in Hitler's book "Mein Kampf" and ending with Re-armament and ^{the} Four Year Plan. The whole is glued together with assumptions and unproven statements. Confronted with this, the Defense was obliged to define its attitude to such a series of assertions, which, having regard to the clear reasoning behind the decision of the International Military Tribunal, must be regarded as legally irrelevant. But we should fail in our duty as defense counsels if, in the interest of historical truth, we did not raise objections to statements which culminate in the assertion of the Prosecution, that everybody, which means the defendants too, must have been able to foresee, as early as during the first years of National Socialism, the subsequent developments, especially as the Prosecution has omitted to determine exactly when this alleged knowledge of Hitler's plans for aggression might have been obtained.

Your Honors, the political developments which led in 1933 to the assumption of power by the National Socialists and the effects during the following years did not remain hidden to the world. There are a large number of statements by leading foreign politicians, who voiced their opinions on Hitler and National Socialism, and

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when you, Your Honors, cannot ignore and whom I shall quote in order to refresh your memory. When we raise the question of guilt surrounding the development of National Socialism, with which at first it was thought possible to inculcate the entire German people, then we proposed to distribute this - I mean here "guilt in the widest sense" - in a just manner. We have to distinguish between this guilt and the guilt which can be charged to an individual and which may be prosecuted under criminal law. Already after the first election success of 14 September 1930, which raised the number of Hitler's members in the Reichstag from 12 to 107, a race to obtain his favor started abroad. It was the English Press Lord, Viscount Rothermere, who wrote an article for the "Volkischer Beobachter" of 25 September 1930, with the headline: "Hitler's Victory. New-Birth of the German Nation. A New Epoch in World Politics." I quote from this same article:

"For the welfare of western civilization it would be best if in Germany a government would assume power, a government permeated by the same sound principles, as those adopted by Mussolini to renew Italy during the last 8 years."

End of quotation. Also in the U.S.A. the Hitler movement began to arouse interest. I would remind you of the journalist Mr. Knickerbocker, who became well known in Germany and who interviewed Hitler. I would like to mention Mr. Hearst, too, who without doubt supported National Socialism in his papers. When the famous Statesman Lloyd George returned in September 1936 from a visit to Germany, where he had spoken to Hitler, he stated his opinion as follows. I quote:

"Germany does not want a war, but fears an attack on the part of Russia and regards the Franco-Russian Pact for Mutual Assistance with some suspicion. I have never seen a people happier than the German people. Hitler is the greatest of the many great men I have met in my life..... Hitler is the George Washington of Germany, the man who has won for his country independence from all its oppressors."

End of the quotation. Even Mr. Churchill was deceived for a time regarding the nature of the NSDAP and the aims of Hitler, when in 1935 he wrote concerning Hitler; I quote:

"The story of Hitler's struggle cannot be read without admiration for the courage, the endurance and the vital strength which enabled him to win the struggle..... It is impossible to pass a correct judgment on a public figure that has acquired so enormous a stature as Adolf Hitler, unless his life work lies before us in the bound. Although later political acts cannot give occasion to overlook wrong deeds, history offers countless examples of men, who, although they were enabled to seize power through the use of apparently hard and ruthless measures, yet for that reason, when their life as a whole is revealed, must be regarded as great figures, whose work has enriched the history of mankind. So may it probably be with Adolf Hitler; but it is not possible for us to have at this moment a definite opinion."

End of the quotation. And I close this selection of prominent voices from abroad not with that of a politician, but of a great and famous writer, namely, Bernard Shaw, who in a speech, according to "Pearson's Weekly" (London, 20 January 1934) declared; I quote:

"Hitler is an extraordinary personality, a very capable person..."
1)

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- 1) The above quotations are taken from an article entitled "Fair Distribution of Guilt" ("Gerechte Schuldverteilung") which appeared on 1 January 1943 in the periodical "People and Time" ("Volk und Zeit").

End of the quotation, Your Honours, these few quotations show us the views held by prominent personalities abroad concerning Hitler and his National Socialism of the first years, and they further show that political developments are difficult to foresee and can give rise to considerable error. The examples finally make clear how false the thesis of the Prosecution already is in its starting point.

Now, Dr. Kuchne was neither a National Socialist, nor had he made a bond with Hitler, neither did he work together with others, in order to prepare with them or alone wars of aggression. The fact that the manager of so large a works could not for ever continue to refuse membership in the NSDAP, which had been pressed on him by the Party in 1933 and 1939, is clear to everyone who knows what the conditions were and has been proved to the Tribunal. The difficulties with the Party were of a many-sided nature. One case which I should like to mention here seems to me to be characteristic and clearly shows the relation of my client to the Party. When a Jewish chemist, Dr. Rosenthal, was arrested by the Gestapo, he immediately intervened on his behalf. It was later established that Dr. Kuchne's correspondence in this matter, which he addressed to numerous official agencies, with the object of obtaining the release of Dr. Rosenthal, was watched by the Secret State Police. Dr. Kuchne repeatedly emphasised that his Jewish chemists and employees were in every way as good

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co-workers as all the others and that he would always intervene to see that their rights were protected. Also on the same level, is the fact that . . . racially persecuted persons were re-installed by my client in the works, protected by him and offered a living, and this in times when it was involved with a personal risk to himself.

In order to give foundation to their assertion that Dr. Kaehn had knowledge of Hitler's intentions to wage aggressive war and had taken part in the planning and preparation for it, the Prosecution thinks it can point to a correspondence with the Vervittlungsstelle W, according to which a so-called "plan game" ("Planspiel") had taken place in Leverkusen. The Prosecution accompanies the document it submits with the observation that it had to do with "tactical exercises", with "War games". ^{Let us assume} ~~We incline to the opinion~~ that this remark of the Prosecution is due to the fact that the translation of the German word, "Planspiel" into English offers certain difficulties and is liable to misunderstanding. As the heading of the so-called "Plan" shows, this has to do with an economic planning which was carried out in accordance with the order of State authorities. The meaning was to establish how the Leverkusen Works, which of course were in the vicinity of the western Reich frontier, could ^{get along} ~~help~~ in the production, in case, in the event of war, they should be damaged by enemy bombs. It was a question, therefore, of purely defensive air raid protection exercises, which, both before and after 1937, were carried out all over Germany.

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No proof has been submitted in any way that this measure had to do with co-operation in the preparation for a war of aggression. In addition to this, my client quite openly referred to this single-performance "Plaspiel" as "play-acting" ("Theaterspiel"). This attitude expressed his conception of the matter. Dr. Kaehne had always been, as we have evidenced by affidavits, a pacifist and anti-militarist, and it is in this connection significant that, under the management of my client, the Leverkusen Works were not declared as an "R-Betrieb", i.e. as an armaments plant.

The Prosecution sees in the rearmament of Germany the preparation for aggressive war. The fact of the armament is not, in the opinion of the I.M.T. Judgment, a punishable act. There were no weapons of attack produced in Leverkusen. According to the thesis of the Prosecution, it would have had to be proved

1. That my client recognized in the re-introduction of conscription and armament, announced in 1935, measures having as object the waging of aggressive war and
2. That in this knowledge he contributed by acts of his to the support of an existing plan of aggression.

My colleague, attorney- Dr. Boettcher, has submitted to Your Honours two document books concerning the constantly repeated peace protestations

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of National-Socialism. These documents and the statements of various witnesses whom we have heard here prove that the German people did not consider possible a war of aggression by Hitler. All the greater was the shock and the defection of the people when Hitler broke all his assurances and committed the most monstrous betrayal of the German people with the beginning of the war against Poland. The Prosecution has not submitted the slightest conclusive evidence that my client had a better knowledge of Hitler's real intentions and was less, or not at all, surprised by the outbreak of war. We are constantly meeting with suppositions, hypotheses and conclusions on the part of the Prosecution, precisely on this first count of the Indictment. The edifice of justice cannot be raised upon such theories. If proof is thus lacking on the part of the Prosecution, I, however, on the contrary, am in the position to show how far removed the works management in Leverkusen, especially Dr. Kuehne, was from the idea that Hitler would wage aggressive war. Here are some examples: At the end of August 1939, chemists and technicians of the Leverkusen works were in Billingham in England for the purpose of putting into operation a sulphuric acid plant built by Leverkusen for the Imperial Chemical Industries. In France, at the same time, a sulphuric acid plant was being installed by employees of the Leverkusen Works in a French Government explosives factory. If anyone had had even the least idea that Hitler contemplated a war of aggression,

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German chemists would hardly have been supporting French explosives factories with such plants. So much for the weakening of the potential power of foreign countries, as far as this charge has been directed against my client. My client's own son, five days before the outbreak of war with Poland, i.e. on 25 August 1939, wanted to sail with the S.S. Pretoria to South Africa, where he was to take up a post. He already had his luggage on board. When the war with Poland had broken out, it was Dr. Hans Kuehne who voiced to his co-workers his deep dejection. Further, Dr. Kuehne took no part in any conspiracy to wage a war of aggression, for the simple reason that no such "conspiracy" existed among the defendants. My colleagues have made the necessary legal statements in this respect.

It only remains for me to point out briefly that my client, so far as he received information of the acquisitions by the I.G. in other countries, or, as in Austria, took part as technical adviser in the acquisition of the shares of the Skoda-Werke Wetzlar and the acquisition of the Messig-Falkenau works in the Sudetenland, had no knowledge which could have led him to conclude the existence of planning or preparation for aggressive war.

Count II of the Indictment.

In other acquisitions or participations by the I.G., which extended

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to firms situated in the occupied territories, my client took no part, and the Prosecution has brought no charge against him in this respect.

Dr. Kuehne has indicated that even to-day he is still convinced that, in the acquisitions by the I.G., of which he learnt, as a member of the Vorstand, on the occasions of the few conferences that the general Vorstand held during the year, the usages customary in private industry were maintained and that no pressure was exercised. The distribution of tasks between the individual members of the Vorstand has been repeatedly referred to during this trial, in connection with the question of the collective responsibility of the Vorstand. It must be agreed that my client is right, when he points out that he had more than enough to occupy him with the tasks involved in the management of his works in Leverkusen. Anything that happened outside of his province and to which there was no apparent reason for objection, could not in justice be held to oblige my client to concern himself with what belonged to the sphere of work of other Vorstand members. He could surely rely on his colleagues, who had nearly all for decades properly conducted their own departments, to carry out also the acquisitions described in this trial under Count II of the Indictment, in a non-culpable fashion. As far as concerns the question of the responsibility of the Vorstand, I can point to the fundamental statements of my fellow Defense Counsel on this point. I will here only establish the fact that the Prosecution have not brought forward a single case against Dr. Kuehne.

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that proved a knowledge on the part of my client that would form a basis for criminal procedure. I think I may refer here to the principles announced by the Military Tribunal No. IV in its judgment in the case against Friedrich Flick and others:

1. Nobody can be convicted unless his personal guilt is proved.
2. The evidence must be sufficient to enable the Court to be fully convinced of the guilt.
3. The onus of proof rests entirely on the Prosecution.
4. Whenever the reliable evidence permits of two reasonable conclusions, that of guilt and that of innocence, the second possibility is to be chosen.

I come now to

Count III of the Indictment:

Dr. Hans Kusche was manager (Leiter) of the Leverkusen Works. He, too, is accused of having employed slave workers, who were presumably improperly accommodated and mistreated. First of all, I will dispute with the Prosecution that the employment alone of workers who have come to Germany against their will, is of itself culpable under the Hague Regulations of Land Warfare and under Law No. 10 of the Control Council. May I state in advance that the judgment of the American Military Tribunal No. IV against Flick has established, I quote:

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" that the slave labor program had its origin in Reich governmental circles and was a governmental program".

End of quotation.

In the evidence and in the documents submitted by the Defense it was shown that the Leverkusen plant in some instances recruited workers in the occupied territories, and on an absolutely voluntary basis. Everyone of these workers came voluntarily and without any coercion to Leverkusen. The employment of voluntary workers is punishable neither according to the Hague Regulations on Land Warfare, nor according to the Control Council Law No. 10, and does not constitute a participation in the slave workers program of the Government.

The problem to be discussed here and now submitted to this Tribunal is whether the fact that foreign slave workers were employed in German industry, is punishable according to international law, i.e. in the particular case to be decided here, where the State issued orders and decrees for the employment of these foreign slave workers and enforced them by punishments. In the Flick Judgment the Military Tribunal stated, I quote:

" Workers were allocated to the plants needing labor through the governmental labor offices.

" No plant management could effectively object to such allocation. Quotas for production were set for industry by the Reich authorities. Without labor, quotas could not be filled. Penalties were provided for those who failed to meet such quotas."

End of quotation. In the case of the I.G. and of my client I can take as basis the statement of Tribunal IV, as the facts are the same as we have here the case of international laws, namely, the Hague Regulations on Land Warfare, being in contradiction to the internal laws of a State.

The conception, according to which only States as such have rights and duties as laid down in international laws, and which has so far been upheld in international law, was denied in the IMT Judgment, and officials and members of the Government who carried out the Government program for the recruiting of foreign workers, which is here under discussion, were sentenced. But in ~~suppose~~ the persons before this Tribunal are industrialists, i.e. private persons, who are accused of having violated international law, because they carried out the orders of their Government which issued them in contradiction to international law. You have therefore first to examine, Your Honors, whether international law can take precedence over the individual internal law of a State according to the legal situation at the time and also today; furthermore, whether, by assuming international law to transcend the circle of State officials, bound by law to observe international laws, every individual citizen must regard international law

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as a law which takes precedence over the internal law of a State. I would like to point out that neither at the time when the defendants were carrying on their activities, nor today is there a general rule, according to which agreements based on international law or international unwritten law (volkerrechtliches Gewohnheitsrecht) unreservedly and in every case come before the individual State law. In the United States Constitution of 1787 the transcendancy of original American State law over international law, in particular, over agreements based on international law, was recognised in the following words. After it was stated in Article VI, 2, of the Constitution, I quote:

"all treaties made or which shall be made under the authority of the U.S. shall be the supreme law of the land and the judges in every State shall be bound thereby,"

End of quotation, the important restriction was added in the Constitution, - I quote:

"anything in the Constitution or Laws of any State to the contrary notwithstanding."

End of quotation. According to this, the Constitution or a law of any federal state may create a State law which is in contradiction to international law, and which transcends international law.

Furthermore, I refer to the decision of the Supreme Court of the U.S.A. in the case against Robertson, 124 US (1888) 190. I also refer to the British practice as set out by Picoté in "The relations of International Law to the Law of England and of the United States" on Page 125. The same conception is held in French law, according to which an international agreement is ^a legal source of equal value to the French law. According to the established French practice, a subsequent internal French law

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can change or cancel an international law already in existence, in so far as it is a question of applying it internally. It must therefore be regarded as a definite rule still valid today that if there is a contradiction between the international and the State law, the judge must apply the State law created later. This legal concept did not change after Hitler became the supreme authority for issuing laws in Germany in 1933. It must be admitted, however, that conflicts between international and State law increased in frequency. Limits set by German or international law did not exist for the Dictator Hitler.

It seems to us that only those who know nothing about the internal situation under Hitler can discuss whether international law or national law had priority in the National Socialist State. Who could uphold that his orders were less valid than Reichstag resolutions? They were supreme decisions. A whole world united later to overthrow his regime. One makes this struggle devoid of all meaning and foundation if one now claims that every German citizen had the right and the duty, to say nothing of the ability, to examine whether the orders by the absolute ruler were legal, whether they were in contradiction to international law, and then to comply with the orders or refute them accordingly.

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The judge, therefore, who bases his judgment on international law cannot be permitted to disregard the general practice of the States which place the law of the land higher than international law, and to give priority to the standards of international law which are opposed to the provisions of the law of the land concerned.

The second question which I would put to you for your consideration is that of whether the standards of international law in their present form are directed against every individual citizen, thus rendering each one liable to punishment for failure to adhere to these standards, or whether the members of the Government or those officials of the State whose responsibility it is to ensure that the provisions of international law are observed within the framework of the laws of the land, can alone be held responsible.

I am of the opinion that the judgment pronounced by Military Tribunal No IV on ELICE has left the main problem out of its considerations altogether. Tribunal No. IV rightly recognizes that the Works Managers appearing as defendants found themselves faced with an emergency situation. This, however, constitutes only a partial answer to the question. I shall return to the subject of the emergency later. Tribunal No. IV does not consider a distinction between those people who, as officials of the State, are under an obligation to enforce the observance of international law, and private individuals, justified, and explains, I quote:

"International law, as such, binds every citizen just as does ordinary municipal law.

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Acts adjudged criminal when done by an officer of the government are criminal also when done by a private individual."

End of quotation. In my opinion, this sentence constitutes an evasion on the part of Tribunal No. IV of the problem under discussion. The question is precisely whether, as a private person, the individual citizen, who is ordered by the law of his own land to act contrary to the provisions of international law, owes allegiance to his own government or whether, disobeying the law of his own land, he should obey the dictates of international law. The untenable conclusion to be drawn from the sentence cited from the FLICK judgment is that, in either case, regardless of his decision, the private individual would of necessity render himself liable to punishment.

In his statement for the Prosecution on 17 January 1946²⁾, Francois de MESTREY, Chief Prosecutor for France in the I.M.T. proceedings, stated the following, I quote:

"It is obvious that, in an organized, modern State, responsibility is limited to those who act directly for the State, they alone being in a position to estimate the lawfulness of the orders given. They alone can be prosecuted and they must be prosecuted."

End of the quotation. We believe the view of justice as expressed by the Chief Prosecutor for France to be the only tenable one and the only one which does full justice to the present-day conception of the law of the individual State. For this view does not oppose the theory of the sovereignty of the State, which is the controlling factor in the government of all countries. There are many examples in the literature of international law to illustrate the fact that the sovereignty of the individual State is a concept which has lost nothing of its importance today, and I consider that I need do nothing more than draw attention to the United Nations' Charter

2) c.f. Court Transcript, German text page 2778

which, on principle, leaves the sovereignty of the individual State untouched. The recognition of the right of veto is the direct and logical outcome of this theory of sovereignty. The note dated 25 June 1928, written by Secretary of State Kellogg to the nations negotiating on the Briand-Kellogg-Pact, also shows that the full sovereignty of the State will continue to be recognized in every State, when that State alone is called upon, I quote:

"to decide whether the circumstances are such that it is forced to go to war in self-defense."

End of quotation. As long as there is no World State to nullify or restrict the sovereignty of the individual States, the internal order of the individual State requires the recognition of the sovereignty of that State, particularly in the sphere of legislation. In the last analysis, this sovereignty is the element on which international law is founded today.

I do not contest the fact that there are regulations within international law which affect the individual person, e.g. the provisions governing the treatment of the wounded and of prisoners of war, for the non-observance of which individual persons can be held responsible - far from it. In the theory of international law, however, such regulations are generally looked upon as exceptions, which can be contrasted with the large number of regulations in international law which apply only to the State, the Government, the "belligerent power".³⁾

3) c.f. Legal Opinion on the Criminal Liability of Private Individuals in cases of the Infraction of International Law, by Dr. jur. Herbert KRAUS, Professor of Law, Membre de l'Institut de Droit International (Member of the Institute of International Law).

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One can recognize, however, in addition, that the States are not mere fictitious legal entities, nor were they ever conceived as such, but that the State is governed and represented by men. The only factor which can be considered essential to the State is the organization, which-I quote Professor NAWIASKI -

"prescribes for certain persons a certain line of conduct which will influence the organization, that is the State, or which can be attributed to the State. It is in the respect that the provisions of international law - and this is their peculiarity - apply to individual persons, the persons thus affected being those directly appointed by the organization, i.e. by the State to hold office. These are the persons upon whom obligations fall within the scope of international law".

End of quotation. In my opinion, it is this view alone which can lead to a just and true impression and judgment of the present situation in so far as it involves the precepts of international law. This view abandons the former theory, in accordance with which only abstract legal entities, the States, could be held responsible for infringements of international law. It extends criminal liability to include those individual persons who, as government officials, act with the full authority of the State, and whose task it is to observe the provisions of international law. It avoids the conflict of loyalties for the individual citizen and leaves to the State the degree of sovereignty which present conditions render necessary.

None of the persons appearing as defendants here was a Government official of this category, of itself responsible for the observance of the provisions of international law and for the preservation of the balance between international law and the law of the land. These legal observations of themselves exclude the possibility of criminal liability in this matter, as the defendants are not the people against whom the above-mentioned provisions of international law are directed.

Having made the above statements, I should now like to examine the problem from another point of view. If the defendants concerned

did, in fact, employ foreign workers, and knew that the workers had been brought to Germany by force, the Court of Law which threatens them with punishment must be in a position to tell them in what way the Law provided for them to avoid employing such persons. The Tribunal sitting in case No. 2 against former General-feldmarschall MILCH included in the Substantiation of the verdict the following sentence on the procurement and use of workers, which is particularly relevant in the present case 1):

"that liability to punishment can only be assumed if MILCH was personally involved in the procurement of foreign workers, or if, knowing full well the course of events, he failed to take any action to prevent it, despite the fact that he was in a position to do so."

End of quotation. We are therefore faced, in legal terminology, with the problem of the crime of omission. I may assume that this concept, as it figures in German penal law, is known to the Court. If we are to apply this theory of the crime of omission to international law, we must first examine the question of whether the offender was under any obligation to take action. It would therefore be necessary to prove that it was a duty of the private individual, in this case, of my client, laid down in international law, to intervene and thus to avert the result which is the subject of the charge, namely the employment of foreign workers on a compulsory basis. In both British and American law, liability to punishment for a crime of omission also depends on the existence of an obligation. (c.f. STEPHEN'S Commentaries on the Laws of England.) 5)

4) c.f. Judgment of American Military Tribunal No. 2, Case No. 2, Page 37 of the German text. (Translator's note: reference apparently incorrect)

5) c.f. STEPHEN'S Commentaries on the Laws of England, pp. 11 ff.

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There is, however, in Military Law and in the Laws of Customs of War, no mention whatsoever of the "duty" of the individual citizen. In view of what has gone before, we would recognize such an obligation only in the case of a small circle of officials representing the State in this matter. The sentence quoted from the Tribunal should, however, be observed in the case of the liability to punishment of a person guilty of a failure of omission, which comes into question only "if the person considered to be under an obligation to act had full knowledge of the criminal action, and did nothing to prevent it, despite the fact that he was in a position to do so."

A further consideration is the fact that the crime of omission presupposes the existence of a causal connection between the omission and the criminal results. ⁶⁾ The Reich Court regularly accepted the existence of a causal connection in a crime of commission (sic), only, I quote:

"If it can be proved beyond all reasonable doubt, that the result which forms the subject of a charge can be prevented."

End of the quotation. It would therefore be necessary to be able to prove beyond all reasonable doubt that the National Socialist Government would have given up its so-called slave labor program, had the defendants actively opposed the same. It is not necessary to stress the point that, even if one were to accept the fact of the obligation to intervene, the defendants would never have succeeded in bringing HITLER to abandon the slave labor program during the war. My client rightly stated, in reply to my question that, in such a case

6) c.f. MEYER, Penal Law, 2nd; edition 1933, Pages 135 ff.;
by SCHEER, Commentary on the Book of Penal Law, 3rd. Edition,
1947, Pages 26/27.

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the only result of such action on his part in wartime would have been immediate imprisonment as a saboteur of industry. That the defendants did not wish to expose themselves to such a consequence was their natural right. The considerations which I have discussed here apply to Control Council Law No. 10 also. Thus the assumption of a crime of omission is excluded from our deliberations.

Now, as I have already mentioned, the FLICK Judgment assumed the existence of an emergency situation, and rightly drew attention to the state of terrorism prevailing under the Third Reich, a state which affected the lives of these defendants also. In this connection, Tribunal No. IV quotes from WHARTON's Criminal Law⁷⁾, I quote;

"The law of cases of necessity is not likely to be well furnished with precise rules; necessity creates the law, it supersedes rules, and whatever is reasonable and just in such cases is likewise legal."

End of quotation. This sentence also recognizes the concept which is known in German law as "Unzumutbarkeit", which can best be translated into English as "unexpectability" (Unerwartbarkeit - Unzumutbarkeit) (conduct beyond the maximum which can be expected of the average man). This concept of "unexpectability" is the general principle underlying all special legal provisions applying in the individual States in cases of self-defense, states of emergency, provocation and conflict of loyalties, but it is not completely exhausted by such cases. It can therefore also be used, for example, in cases in which the conditions determining a state of emergency are not fulfilled.

7) c.f. WHARTON's Criminal Law, Volume I, Chapter VII, Sub-Section 125 and similar cases.

because a defendant did not know of the removal by force of foreign workers to Germany. In such a case, "Unzumutbarkeit" (unexpectability) (conduct beyond the maximum which can be expected of the average man) within the meaning of penal laws, plays its part, acting as a general basis for the exclusion of criminal liability. "A man cannot be held guilty for his action when he could not reasonably be expected to have acted otherwise. In the last analysis, to think along the lines of penal law is to think in terms of the individual person and of the individual case." 8) The conception of the law as the definition of the ethical minimum which can be expected of the individual, leads to the conclusion that where there is no case for reproach on ethical grounds, there cannot be any question of a charge of guilt in the eyes of the law. The concept of duty must of necessity lose its value if the average citizen is incapable, on account of the extraordinary nature of the circumstances in the case of adhering to the standards set by it. If the average citizen would have acted in precisely the same way as the person committing the offense, there is no longer any necessity to punish the offender either in an attempt to improve him or to protect society, and thus there is no longer any necessity to administer punishment. In the above, I have explained to Your Honours the concept of "unexpectability" as it is interpreted both in the theory and in the practice of German law. 9) "Unexpectability", the basis for the exclusion of guilt, gives to the Judge a last opportunity to weigh the guilt of the offender, an operation in which we are concerned not only with a principle serving as an auxiliary in the administration of justice, but with a basic principle which it is the duty of every Judge to observe.

8) c.f. Professor Dr. MEZGER, Munich, Penal Law, 2nd. Edition, 1933 Pages 370 ff., Article 49.

9) Compilation from SCHAFERWEIN, "Unexpectability" as a General Basis for the Exclusion of Guilt, over-riding the Provisions of the Law", Pages 75/79.

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The observation of this principle is not an arbitrary choice, but the expression of "critical and at the same time creative thought",¹⁰⁾ This precept enables the judge who rejects stubborn legal positivism to reach a just decision.

As Chief of the Leverkusen works, the situation in which my client found himself in relation to the employment of foreign labor is clearly characterized by the fact that it was impossible for him to refuse the foreign workers allocated to him by the Labor Office if they did not come to Germany voluntarily. Here you might make use of the conception of a "state of emergency" (Notstand), or the general conception, just discussed, of "excessive demand made on personal responsibility" (Unzumutbarkeit), if, on the grounds which I explained, you do not limit the circle of persons at whom international law is aimed in our case. One fact is certain, as has often been proved in this trial too, and that is that no works Chief during the war could dream of refusing to employ forced labor without risk to himself.

Now grant the Terrorists generally convicted by the National Socialist Government was, we have shown you in two instances in the evidence presented for Dr. Kochne and here I shall mention only the case of Ricken, Director of mines

¹⁰⁾ Prof. Dr. Mezger, Munich, Criminal Law, 2nd edition 1933, Page 370 ff., Paragraph 49.

in Essen, who was arrested by the Gestapo because at a conference in which 5 people took part he expressed the opinion that Germany had lost the war. Herr Rickman was condemned by the People's Court, and executed. The Counsels for the Defense, who have defended political persecutions in many trials under the Third Reich, could describe only too many similar cases to the Tribunal which would give weight to the arguments brought forward by the defendants. The fact that forced labor was employed on the orders of the State, and the allocation of foreign labor by the Labor Offices can thus not be considered criminal in accordance with either the Hague Rules of Land Warfare or Control Council Law No. 10.

As far as the treatment of foreign labor in the Leverkusen works is concerned, I can be brief. Not a single foreign worker has appeared as a witness before this Tribunal bringing a complaint against the treatment of foreign workers and prisoners of war in the Leverkusen works, nor has the Prosecution submitted an affidavit by one of these foreign workers or prisoners of war. The few statements which the Prosecution brought forward on this point were taken from the files of the works. In the closing brief I have dealt thoroughly with these documents. They are so unreliable that I need not go into them here. I should merely like to call attention to the fact that of the 26 documents presented as evidence by the Prosecution

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in Volume 7D of their document books, as many as 16, that is, more than half, refer to the period after 31 July 1943, to a time, in other words, when Dr. Kuchna was no longer responsible Chief of the works. These 16 documents are consequently legally irrelevant as far as my client is concerned. Nevertheless, in the interests of the prestige and integrity of the works management, Dr. Kuchna also discussed these 16 documents in the witness stand. If I told you, Your Honors, at the beginning of my statements, that care for the social welfare of the laborers and employees in Leverkusen was an old tradition of the works, so here too I can justly affirm that the Defense brought forward the evidence to prove how conscientiously, despite the most difficult conditions during the war, of which not the least important cause was the constant air attacks, the foreign workers were cared for. The chemical industry has never willingly employed foreign labor. Quite apart from the fact that their accommodation and catering entailed no inconsiderable additional expense, the chemical industry in particular makes high demands on the mental suitability and versatility of the individual worker, so that foreign languages and long training present natural obstacles in the employment of foreign labor. My client Dr. Kuchna created a whole system of supervision which enabled him to provide the best possible care for the welfare of these foreign workers.

Final Plea Machine

Over the camp leader appointed by the German Labor Front, he appointed a Supreme Camp Leader, who lived in his house so that he could be in close touch with him and report to him. When he found that one of the camp leaders of the German Labor Front had been guilty of irregular conduct, he had the man dismissed immediately. He issued orders that the plant leaders, independently of the camp management, were to concern themselves with the accommodation and catering for the foreign workers and that the interpreters were to make enquiries about the workers' wishes. Since, however, he did not trust these interpreters either, he incorporated into his system chemists and engineers proficient in languages, who were also responsible for this task. In the individual plants there was a so-called "godfather system", by means of which a German worker was allotted to the newcomer, with the task of familiarizing the foreign worker with his job and looking after him. A special department for accident protection constantly supervised the work buildings and issued instructions in all languages in the interest of accident prevention in the plant. The huts in which the foreign workers were accommodated and which were largely provided with steam heating, were inspected after the war by high American and British officials, ^{who} /re-portedly expressed their satisfaction with the arrangements and general convenience. Let me refer once more to the catering. The Defense has submitted to the Tribunal a chart of the calory rations for the

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years 1942-1944. According to this, the foreign worker received in 1943, in other words at a time when the food situation in Germany was already very difficult, 2000-2600 calories per day as the standard ration, 2100-3000 calories for overtime and night shift, 2500-3400 calories for heavy labor and 2800-4186 for the heaviest work. It was shown that over and above these amounts, the works management provided additional food for the whole staff. If this is compared with the calory ration which the German population has now been receiving for 3 years since the end of the war, and which is now at a level of about 1445 calories per day for the normal consumer in the Western Zone, with no guarantee that this can be maintained, one can then see how good the catering was for the foreign workers during the war.

The foreign workers were looked after in the same manner as far as cultural and social welfare were concerned. Sports grounds and swimming pools were laid out, sports equipment and musical instruments were provided. The Russians had a whole balalaika orchestra. Gineas and variety shows, foreign books and papers in various languages provided entertainment. Clothing and materials supplied by the works management were worked on in sewing rooms. A crib and kindergartens were available for the small children. Language courses were arranged. The auxiliary hospital for the foreigners and the dental surgery were exemplary.

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Such was the picture presented by the welfare organization provided for foreign workers by the plant management of the Ickwerth works during the war.

Your Honor, my client is unjustly charged with crimes as described in the indictment. He can look back with a clear conscience on the period of his work as Chief of the Ickwerth works.

Dr. Kuehne is not guilty on any count. I appeal for his acquittal.

Final Plea Kuehne

CERTIFICATE OF TRANSLATION

1 June 1948

We,

Victoria ORTOS,	ETO # 20129,
Eugene R. KUN,	D - 429798,
Anne MARTIN,	ETO # 20144,
Brigitte TURE,	ETO # 35130,
Beryl C. BESWICK,	ETO # 20183,
Patricia E.C. WOOD,	ETO # 20139,

hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of Final Plea Kuehne.

.....
Victoria ORTOS
ETO # 20129
pages 1 - 5

.....
Eugene R. KUN
D - 429798
pages 6 - 11

.....
Anne MARTIN
ETO # 20144
pages 12 - 19

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Brigitte TURE
ETO # 35130
pages 20 - 23

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Beryl C. BESWICK
ETO # 20183
pages 24 - 31

.....
Patricia E.C. WOOD
ETO # 20139
pages 32 - 37

Finan. Plan, Kucak
(Bakur)

Case 6
Defense

Case 72

Trial of Dr. H. H. H. and others

2121-1-1-1-1

for

Dr. H. H. H.

by

Helmut H. H. H.
Attorney-at-Law.

Nürnberg, June 1942

Dring



Your Honors,

The fact that I am the last of the defense counsels to plead for his client, Mr. Earl, seems to me, in all circumstances, due to the fact that he occupies the last seat in the dock. However, there is indeed more profound reason for it. The High Tribunal will remember that during the interrogation by the Prosecution, the Prosecution's witness Frank-Johns confessed that it was recommended to him before the beginning of the trial to be co-operative during his interrogations, that otherwise there was still an unoccupied seat in the dock. I also know from utterances of other persons who were closely connected with the Prosecution's staff that they have always arrogantly spoken out of turn, to the Prosecution when, to have all 24 seats which had been created by the historical trial before the International Military Tribunal occupied, at one time consideration was given to taking the aforementioned Herr Frank-Johns instead of my client, Mr. Earl. Latter has become a defendant and the former a witness for the Prosecution.

I can but guess the last reasons the dice will throw. At all events I can draw from these facts the conclusion that my client plays a very important part within the framework of this trial, an opinion which is confirmed by the chief prosecutor's words in his opening speech on 27 August of the past year. At the end of his opening speech he tried to prove the responsibility of members of the Government of the I.G. for the occurrences during the past 15 years. He tried to convince the Tribunal that he had to which even in my opinion is far beyond his own sphere of activity.

He did not make a statement with respect to the last four of the defendants since they had not been called to the stand of the I. A. In an explanation of why my client is here in this room at all, he restricted himself to the statement that, in his opinion, my client had been one of the most skillful detectives

of the I.O. in planning and executing the spoliation of the occupied territories, and had consequently played a leading part in the policy of aggression and the unlawful spoliation of the occupied territories.

In stating that he did not say anything about the 'Prosecution' theory to establish the responsibility of the defendant and he did not do this on any other occasion, so that it is up to me to deal with this problem. If I should be frivolous I should finish my final plea with this, since the tribunal wished that each of us in this proceeding should independently state the events which took place in the July 1930 in 1930 - as not falling under the viewpoint of crimes against humanity and war crimes.

The caution which is dictated to me in this case by my profession to avoid any frivolous attitude, makes me say that the main question for the question of the defendant's responsibility should be where I have to begin with my final plea.

If a criminal, as in this case, has to go through an event which began 15 years ago, it is a task to accomplish which seems insurmountable. It is to find out what kind of activity a person had 15 years ago, but to go back to that time, that over-all view of the events and, finally, the responsibility. If the age of the defendant is used in the same time; time has changed, people have changed other factors. It appears different from that as it was then, especially if he has spent the last 10 years in prison.

Final Flee Taylor

At the date of Hitler's accession to power in 1933 my client was 32 years old. He had already been employed with the I.G. for 11 years; he had joined the predecessor firm in 1921. Now, further 15 years have elapsed, but not only the external appearance has changed.

Final Floor Rector

His professional career set him, in the meantime, other and new tasks, his position has acquired a wider basis, and his responsibility has increased. However, one must make an attempt to visualize the past; the actions of that time must be judged from the viewpoint of the then prevailing conditions and of the man's personality at that time.

The following may be a proof for the importance of what has just been said: Mr. Curin has been active for 10 months among the members of the Vorstand of the I.G., at a time when he could not dissociate in former times due to his position. The impression of today gives a false picture.

In 1933, which I consider, for the purpose of this argument as the beginning of the period which the Prosecution considers to be important, Mr. Curin was following years until shortly before the beginning of the war there were 5 members of the Vorstand in the commercial section of the I.G. for Germany, who were associates of my client; of them only one is present, so that it appears as if my client had been, during the last 15 years, the principal advisor of his superior. This was not even the case during the subsequent time of war. Until shortly before the end of the war another commercial member of the Vorstand of the I.G.'s sales department was active, a Herr /A 1 / 1, who is reportedly mentioned in the documents and who likewise was a direct superior of my client. It seems to me to be significant to take this into consideration when judging the extent of my client's responsibility.

As I have just spoken of Herr /A 1 / 1 I would like to point to one thing which indicates that, in his capacity as head of the sales department for some of the countries of South-West Europe my client was also not as independent in all things as one might suppose. Herr /A 1 / 1 considered it to be his special sphere of tasks to supervise the I.G.'s relations with the Foreign Organization of the Party.

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The witness Dr. Overhoff testified here in regard to this on the occasion of his interrogation by my colleague Dr. Stumpe. This whole question in particular, to which the Prosecution attaches considerable importance because it is under the impression that through its relations to the A.O. (Foreign Organisation of the NSDAP) the I.G. contributed substantially to the preparation for the aggressive war, was therefore by and large not up to the free discretion of my client. He rather had to stick to the general line of conduct which Herr Weibel, in collaboration with his Vorstand colleagues, considered as advisable. That importance Herr Weibel attributed in this connection to my client is shown by the fact that he did not consider it necessary to invite him in the year 1942 to the dinner which he gave to the A.O. in order to - as the witness Overhoff testified - improve in some measure the strained relations with the A.O.. Let me remind the High Tribunal of the fact that the same Herr Overhoff gave his opinion in regard to different Prosecution documents which were supposed to have been connected with alleged propaganda and espionage activities. He was able to do so, as this belonged to his sphere of activity, the sale of dyas in South American countries. In addition Herr Overhoff stated that his direct superiors had been Herr von Schnitzler and Herr Weibel, therefore not my client. It is not my task to evaluate the statements made by Herr Overhoff. I would merely like to point to the fact that this concerned events which were outside of my client's sphere of activity and that they therefore could not be criticized or influenced by him.

Now if I try to picture which position the 32 years old Ernst Eugler held within the IG when Hitler came to power and the IG was supposed to have allied itself with him, then I have to show that my client up to that day worked exclusively in the Executive Office of the predecessor firm of the IG in Buchst near Frankfurt, and later on in the Executive Dept. for Lye Sales of the unalloyed IG, and

HERALD FLECK EUGLER

that he dealt exclusively with questions of international collaboration in the field of coal tar dyes. He was drafted for the preliminary work of drafting the different cartel/agreements, and he has later on also taken part in the different cartel negotiations with Swiss and French dye producers and in 1932 in the negotiations of the Tripartite Cartel with the I.G.I.. Thereby I do not intend to claim that my client's sphere of tasks was unimportant and his position of minor importance. He was certainly on the way to develop into an exceptional expert in this field and he could probably have been a valued adviser of his superior.

It is only my intention to show that up to the year 1935 he was exclusively active in this field and that he was also not yet entrusted with the actual business of dye sales. At that time he was not yet within the inner circle of the Dye Committee (Farbstoffausschuss), the committee (Gremium) which worked on the decisive problems of the dye trade. Only five years later was he appointed to this committee. In 1934, at the age of 33, he was appointed to a post in the active sales division; he was entrusted with the management of the sales department for dyes going to different countries in Southeastern Europe. Not until 1939 was he appointed to the Southeastern Europe Committee of the I.G., which served for the uniform treatment of common Southeastern Europe business questions and afforded an insight into the sales policy. He joined the Commercial Committee only in the year 1940.

I draw different conclusions from this:

1. Due to his position Herr Eugler had only a general view of the dye business of the I.G.
2. Herr Eugler had only a restricted view, since besides himself other gentlemen managed sales departments independently, with which he had nothing at all to do.
3. Herr Eugler had, due to his position, no knowledge of the manufacturing side of the I.G.
4. Herr Eugler held only minor responsibility within the large business world of the I.G.

FINAL PLAN REGLER

5. Herr Engler had no possibility and no obligation to influence the business policy of the I.G.,

The final conclusions reached by me out of this are to the effect, that Herr Engler can not be found guilty of any participation in the preparation for an aggressive war, since no evidence as to his guilt has been supplied.

I have examined the few facts in which he is mentioned in connection with the documents of the prosecution dealing with his sales activity in Southeastern Europe and in connection with his activity in the Sudetenland, in my Closing Brief, without coming to the conclusion that he became a crucial agent in a war of aggression through his actions.

My client started his activity in the I.G., as I mentioned already, by working in the executive dept. of the dye sales division. This position was held by him up to the end of the war. From the position he held as a sales agent, for this reason I have to deal yet to a minor degree with the structure of the Executive Dept. for Dye Stuffs. In his interrogation my client himself has stated that this activity was less independent than that of a sales agent. As testified, as it also became evident from other statements, that the Executive Dept. for Dye Stuff was not in charge of the sales departments, nor of the legal department of the dye stuffs division.

This department was, according to its nature, not a department with independent powers. It was rather an auxiliary department whose task it was to assist the business members of the Vorstand in the dye stuffs Sparte, to do preparatory work for them, to assist and advise them.

However important the fields covered by such an extensive sales business, which was supervised by Vorstand members, may have been, it is not contradictory when I conclude that this department was not independent in

my outside dealings. The department operated in executing the directives of its superiors. In such cases these superiors hold the responsibility. If a staff member of this department advised his superior after he had done the preliminary work, then it was this superior's duty by reason of his better knowledge, insight and experience, to evaluate the given advice and to ascertain whether it was of any value or not. The decision reached in consequence of this was made on his own responsibility. If his opinion differed from that of his subordinate, then he was responsible for the measures arising out of this from the beginning. In case both were of the same opinion, then one can not come to the conclusion that due to the assent of the subordinate, which is normally of no consequence to the decision of the superior, he took over any responsibility thereby. In the relation between the subordinate and his superior any participation by assent is as a definition impossible, if I may be permitted to quote the text of the Control Council Law No. 10.

As in a business enterprise normally an absolute limitation of competence and responsibilities does not take place as for instance in the case of State authorities or in military organizations, I would like, just in order to make my argument more clear, to point to a matter decided before a local Military Tribunal. I believe that this comparison might be of some benefit. In the trial against several Generals, (Trial versus Weicks and others, Case VII) the military Tribunal V concerned itself with the position of the two defendants Forstach ¹⁾ and von Goltz ²⁾. Both were Chiefs of Staff attached to Army Commanders in Chief. In the rules of conduct given in the handbook for General Staff Officers of the German Wehrmacht, the following sentence states: "The ~~leader~~ ^{leader} carries the responsibility for the deed. The General Staff Officer is aid and advisor."

1) 2)

The Military Tribunal acquitted both defendants because they did not have any power of command of their own in connection with their advisory activities. They were not held responsible for matters in which they had only assisted as subordinates. As I already said, conditions in the Wehrmacht are different from those in an industrial enterprise. Nevertheless, it is a question of fundamental importance which can also be quoted for the decision of the present case.

In the trial against Flick and others (Case V), which Military Tribunal No. IV had to decide, the defendant Flick was found guilty in the "Rombacher Foundry" affair. The defendants Weiss, Burkart and Kaltsch were his advisers. In the reasons given for the verdict on 22.12.47 the Tribunal stated the following:

"Weiss, Burkart and Kaltsch had fairly small roles in this transaction. They were Flick's hired employees without any capital interest in his enterprises. They furnished him with information and gave him advice. The decisions, however, lay with Flick."

The Tribunal concludes this paragraph with the following words: "We cannot see any guilty offense in their conduct for which they can be punished now."

The above-mentioned trial against Flick and others was the first industrial trial which had to be decided by one of the Military Tribunals here. It ought to be proper to draw the parallels which I have drawn.

Besides that, attention might also be called to the following with respect to questions of fact. In my presentation of the evidence I have demonstrated that the principle in the Farben Executive Department that every employee was under the Manager of this Department was broken. This applied to the member of this Department, BURKART, who made his reports directly to the business Vorstand members of the Farben Works.

1) German transcript, Page 10377/78 (19 Feb. 1948)

2) " " " 10380

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I have gone into this situation in greater detail in my Closing Brief. I have thereby sketched the position which my client held within the I.C. I request that the Tribunal will take this into consideration when it comes to finding the judgment.

As I explained in my Opening Statement, in accordance with the division which has been made between myself and my colleagues I was to discuss chiefly those events which occurred in autumn 1938 in the part of Czechoslovakia which we called the Sudetenland. Since the Tribunal decided in advance that those events cannot be condemned as crimes against humanity, as they are events which occurred before 1.1.1939, and that they cannot be considered war crimes since there was no question of any military occupation of a part of Czechoslovakia, I have only had to examine these facts from the point of view of participation in the preparation of the war of aggression.

I should, therefore, like to devote a short time to the events which led to the annexation of the Sudetenland to the German Reich in 1938 and to the acquisition of the Aussig and Tolkaneu plants of the Prague Association for Chemical and Metallurgical Production. The International Military Tribunal described the annexation of the Sudetenland to the German Reich as a criminal act and as an act of implementation in planning and preparing the war of aggression. It stated that Hitler did not intend to abide by the Munich Agreement. According to Ordinance No. 7 these findings are binding for the decisions of other military tribunals. I do not intend and see no occasion to comment in any way against them.

However, I ask to be permitted to point out the following:

One must make a clear distinction between the historical-political

event which was set in motion by the measures of the German State leadership, that is to say, of Hitler, and the measures which the executives of the I.G. adopted at this time. With the first-named development, which began with the activity of HENLEIN, the representative of National Socialism in Czechoslovakia, then led to the investigations of the British expert Lord Runciman, and finally found its conclusion when the Great Powers at the time, England, France, Italy and Germany, signed the Munich Agreement, the executives of the I.G. Farbenindustrie had nothing to do. Participation in these measures has neither been alleged nor proven.

○ In so far as the conduct of the I.G. in this connection is concerned it must be stated that it was set in motion by the reactions which political events had on the economic situation. The documentary material has resulted in the following picture: After the annexation of Austria and the consequences which this territorial alteration had for the I.G. concern the executives of the I.G. began to be interested in the consequences which might result if parts of Czechoslovakia should come into the German sphere of influence. In the beginning these considerations were not very clearly defined or systematic and were really aimed more at preventing any disadvantages which might arise from the fact that the I.G. organization in Czechoslovakia was not so formed that it could stand up against an investigation by National Socialist Party agencies. The Prosecution has called particular attention to a conference on 17 May 1938, the records of which must leave one convinced that there can be no talk about any systematic action at that time. Herr SIEBOMM, the Manager of the Czechoslovakian Sales Agency, the man in whose honor the meeting was held, has perhaps found the right word for it in his statement

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when he says that it was all extremely Jewish.
Larsen other than, as the prosecution proves, had already
established contact with the German authorities at the beginning
of the year in order

to acquire some influence over the local industrial plants in the event of the annexation of the Sudetenland, the I.G. did not hold its first conferences with the Ministry of Economics until shortly before the Munich Agreement at a time when there was talk in the German and international press of the possibility and justification of the separation of a few areas. This occurred at a time when the heads of the Association for Chemical and Metallurgical Production in Prague had already undertaken steps themselves in order to establish a connection with a German enterprise. This enterprise was the Ruotgers Werke, the manager of which, Karl Friedrich IMMLER, has appeared here as a witness for the Prosecution.

He testified that he discussed ^{plans} with referents to a sale with the heads of the Association at a meeting in Aussig. Since the men in charge of the Prague Association were no longer in Aussig after the conclusion of the Munich Agreement, as the Prosecution witness DYORACEK has stated, these conferences were held at a time when the I.G. executives had not yet negotiated for the acquisition of the Aussig and Falkenau plants. The heads of the Association for Chemical and Metallurgical Production had already at an earlier date taken into account the possibilities which the future might bring by sending one of their principal employees, Walter NEUMANN, to Aussig in order to protect the interests of the General Directorate in case territorial changes should occur.

Herr Neumann has testified that he arrived in Aussig on 23.9.1938. Measures which are calculated to serve for the preparation of a war of aggression cannot be measures which were taken subsequent to it. Otherwise they cannot be preparations. The measures which the I.G. executives took up to the conclusion of the Munich Agreement were steps of this kind and cannot be considered as preparatory acts.

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The prosecution wants to prove the existence of the subjective elements of the crime by knowledge or, more completely expressed, by representing the final consequences which the individual could draw from the historical events of that time, or almost necessarily had to draw. In order to avoid false conclusions I must quote a few more words to this point. Did not the event of the time appear to a contemporary? The opinion of a contemporary at the time is alone important. I might, therefore, have omitted a remark about public opinion at that time.

On 17 May 1938, on the day when the conference in Berlin was held, at which several I. N. employees occupied themselves with the Czechoslovakian problem, the leader of the German Germans, Konrad Henlein, was in London and discussed the question of the German Germans with leading Englishmen. The London "Times" wrote:

"Henlein's visit to London is an extremely satisfying expression of the desire which the leader of the Germans in Czechoslovakia has to find a peaceful solution.

Whatever apprehensions one had before his arrival nobody can have any more doubts on this score now."

The Swiss newspaper "Journal de Geneve" reported on 18 May 1938 that Churchill had received Henlein and expressed himself as follows in connection with this meeting:

"I was extremely glad when I discovered that the course of my conversation with Henlein had led to the prospects of a friendly agreement between the Czech Government and the German population were better than I had really expected."

When Lord Runciman's mission of investigating the Sudeten-German question became known, "Daily Telegraph" in London, in the beginning of August 1938, wrote that there was no reason whatever to doubt Hitler's good intentions of realizing a peaceful solution.

About ten days later, "Journal de Geneve" devoted a leading article to the Sudeten-German question and wrote, among other things:

"We wish to repeat: we do not impute to Hitler the least inclination to war."

On 16 July 1938, there is a leading article in the "Journal de Geneve" with the caption "Views of the Sudeten-Germans", in which the author gives the following outline sketch, to which must be said that the opinion reproduced there was a very common one, and could be imputed to a large part of the German people as their opinions:

"It is well possible to sum up the views of the Sudeten-Germans as follows: Up to 1918 we lived under the rule of the Austrian Empire. The fortunes of war have made us Czech nationals without that we were asked about our national preferences. At the moment of this change of our lives, our political and philosophical ideals were those of the liberty of the individual, the recognition of his historical culture, his language and his mentality. We did not think of anything else. Unfortunately, the Czechs, suddenly risen to be the masters, did not understand our wishes or, if they understood them, did not intend to satisfy them. In Prague, they believed that centralism would solve the complicated problem which our existence within a state, which was not the state of our choice, depicted.

Soon practically, they subjected everything to the process of becoming Czech. Certainly, we were granted theoretical rights and personal guarantees by the constitution and the laws, but the gendarme, the soldier, the rural supervisor (*Landaufseher*), and the teacher, too, who were sent to us from the capital, they all know much better their official prerogatives, which they sometimes misuse, than our rights by the constitution. Properly speaking, everywhere in the entire country one speaks, acts, and is guided by things Czech, and in the course of these 20 years we became isolated, and ^{stood} like people lost, in the midst of Czech life."

I wish to supplement this picture of the editorial writer of a Swiss newspaper, known for its anti-German attitude, with a few remarks. The Sudeten-German problem in Czechoslovakia is older than this state itself. That it is a serious problem was even admitted by the English chargé d'affaires, Lord Rensselaer, in his final letter to the English Prime Minister in September 1938, as the American historian Walter Connolly Lange is confirmed in his book "The World since 1914", published in 1943, Czechoslovakia at its founding had a German minority of 3.5 million people. It is therefore a political population problem which was known before most people knew Hitler, even by name.

This was the state of affairs which at that time occupied the minds of the European public opinion for months. But the public's attitude was, has been shown by us right above. When, thereafter, the great powers had found a solution of this question, the contemporaries could not well suppose that the English Government,

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which had a decisive influence upon the events, was convinced that Hitler was preparing a war of aggression. Even today, the ultimate historical background of these events has not ^{been} fully disclosed, a few days ago, as I saw from a newspaper, the French leader of Socialists, Leon Blum, dealt with the events of the autumn 1938. He points to the historical fact that, shortly before the Munich agreement, serious attempts were made in Germany to overthrow Hitler's regime, and that, at the instigation of the then Chief of the General Staff, Halder, an emissary came to London in order to advise that Chamberlain should not yield during the negotiations, so as not to strengthen Hitler's position by a new appeasement, and thereby to wreck the plans of the German resistance movement. This emissary had, as Leon Blum is in a position to state, to talk with the then diplomatic adviser of the English Government, Lord Runcible. The result was negative. Chamberlain flew to Munich, and has, surely unwittingly, obviously and considerably strengthened Hitler's position in Germany and in the world. From this one may well conclude that Chamberlain, one of the principal actors in this historical event, did not believe in Hitler's absolute war like intention, as the International Military Tribunal, looking back, has established. How could, under these circumstances, a person living in Germany be expected to have known of Hitler's preparation for war, without proving that he had special knowledge?

I think I may dispense with going into further details in view of the above mentioned decision of the Court. If the Prosecution wants to infer from the activities of the IG during this period that they knowingly participated in a preparation for war, it would have had to prove it. It failed to do so. In particular, it was unable to furnish proofs

FINAL PLAN EUGENE

that the production of the newly required plants was reorganized for the purpose of increasing the German war potential, with the intention to advance not only armaments, but also a war of aggression.

FREDERICK EUGLER

If now, at the conclusion of my plea, I again come to speak of my client, I wish to say the following for a better understanding of his character:

Ernst EUGLER worked 24 years for the IG, he began when Germany suffered under the consequences of the previous war. The rising German industry of coal tar dyes had suffered particularly heavy losses; it lost, among other things, its possessions in neighbouring France, which it had built up in a peaceful pioneering work. Hoechst, the place where my client worked, was at that time occupied by the French Army of Occupation. He took part in the peaceful work of reorganisation carried on in the subsequent period. It was a peace-time job of almost 20 years' duration, when a new war broke out, which he could not hope for, but which he had to fear. The dye stuff business was, for a large part, based on exports. It could not profit from a war, he knew that from the last one.

I said just now that my client had worked 24 years with the IG. I may as well increase this again a bit, and say correctly, that he worked 28 years for the IG, by including the period he worked as an employee of the American IG Control Office, up to his arrest in the past year. In this work too, which served rather more the purpose of historical research, he endeavoured to contribute his share in clearing up the past, always convinced that nothing reprehensible had occurred in the past.

With the same conviction my client also took the stand on his own behalf, and tried to elucidate and to explain, as far as he was in a position to do so. Thus, his testimony may be evaluated, be it that he gave account of his former scope of work, be it that he spoke about other incidents, which he had come to know from the sphere of work of the Sels Combina Dye stuffs, as the only member of which he here appeared for justification.

be it that he disclosed the knowledge he had gained by his activity, after the German collapse, by a study of the files in the Control Office.

On the strength of this conviction, he conscientiously refused to limit his statements. On the other hand, he spoke as a man, who looks retrospectively at the events tempered by the knowledge of today, but not from the same point of view, as he saw them at that time.

I, therefore, express the hope that the High Tribunal has gained the conviction, that my client ^{gave the right answer} 10 months ago, when he, upon the question of the Court, whether he pleaded guilty or not guilty, gave the answer of not guilty.

Final Miss Euler

Q. UNITED STATES PATENT OFFICE

3 June 1948

we, Joseph L. Coester and John B. Robinson hereby certify that we are U.S. appointed translators for the German and English languages and that the above is a true and correct translation of the Final Miss Euler.

Joseph L. Coester
S 597993

John B. Robinson
S-045350

Film Roll, LAUTENSCHLAERER
(EMERSON)

Case 6
Defense

Fidel Ilo Lutenscho, AKA

Fidel Ilo

for the Defense of Professor Carl Lutz, Lutenscho, et

alibi before the

all by Tribunal I VI Nurnberg

in June 1948

by Dr. Hans Ribick
Attorney at Law

Aug



Final Plea: Lautenschlager

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Your Honors,

"By a document dated 12 July 1941, both the Rector and the Senate of the Marburg Philipps University have bestowed upon Professor Dr. med. Carl Ludwig Lautenschlager the title of Honorary Senator in appreciation of his scientific work in the field of chemistry and pharmacology, as well as for his generous efforts to promote the chemotherapeutic research. In the person of Professor Lautenschlager the university wanted to honor a man who has proved his deep understanding for all scientific branches, and who has put his scientific knowledge at the service of suffering humanity."

In its declaration submitted by me in this trial, the University of Marburg made the following declaration to its above quoted salary:

"The university feels that it is its duty to refer to such facts even at the present time."

Joining the Marburg University in its society, all the other specialists-world looks to Marburg in order to learn whether Professor Lautenschlager, to whom mankind owes so much is in actual fact a war criminal who must be punished.

I. Reports Concerning Professor Lautenschlager's

Childhood:

Professor Lautenschlager is now completing his sixty-first year. Fate did not endow him with material goods, and therefore, he was forced in early youth to earn his living and require the funds necessary for his studies. All objectively thinking persons will be filled with admiration if they learn of the career of this man, which I have substantiated by submitting detailed documents.

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Professor Lautenschlager's life was a long sequel of indefatigable activity in the service of science. He served and aided his fellow human beings, as has been confirmed by numerous testimonies, regardless of their political views or race. He never took an interest in politics nor was he a member of a political party. Not until the Gauleiter in the totalitarian Third Reich put him under pressure did he join the Party as a matter of force. He was informed that not unless he joined the Party, could he be confirmed in his position as Director of the Hoechst Farben Factory. After conscientious and serious deliberations on that question conjointly with his colleagues in the Directorate, Professor Lautenschlager then proceeded to join the Party as a matter of force in order to prevent a person, who might be tied to the Party, becoming the "first leader" of Hoechst. By becoming a Party member he did not become a National Socialist, and the Party, as a rule, was well aware of this fact.

II. Charges of the Alleged Participation in Illegal Activities, i.e., Recruitment of Foreign Workers and Prisoners of War.

From 1933 on Professor Lautenschlager was in charge of the Hoechst Farbenwerke and the plant community at Ludwigshafen. It was in particular the medications for human patients and medicine out of the products that were manufactured under his personal supervision which became known all over the world. Let me mention here some of the best known of those products: Tuberculin, Silver-sone, Vitamin and Hormone preparations, furthermore Sevelgin, Gafin and the substitute Morphine Preparation Dolantin. In 1945, as a result of the investigation of the charges raised by the Prosecution against the Hoechst factory management, as far as they concern the alleged preparations for war as well as the employment of foreign workers and prisoners of war.

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In order to avoid repetition, I would like to refer fully to those statements, in a case in which I have also proved that the total production of the Hoescht plants was used only for peaceful purposes, and that Hoescht, apart from a trifling quantity of fog acids (Wobelschlaeger) did not have an exclusive war production program. In his affidavit of 26 March 1947 the defendant Lautenschlager made several mistakes. The High Tribunal has been informed by various motions which I submitted that the defendant Lautenschlager was in bad health when he made his affidavit, and that other circumstances also were prevalent when he dictated them. Besides, the defendant J. J. J. has rightly pointed out that the terms war essential production and exclusive war production program are frequently confused, and that therefore a misunderstanding must have occurred. However, no matter which fact applies here I am certain that I have proved, based on numerous testifies, that the production of the Hoescht Plant was not an exclusive program for armaments, and that therefore it was quite possible to have foreigners and prisoners of war work in these plants. I shall yet deal in detail with this production program in my Trial Brief.

In my plea for facts I have taken issue with the attitude, as initiated by the plant management, towards the prisoners of war and foreign workers who were employed in the Hoescht Plant. Various facts have been introduced which prove that Professor Lautenschlager exerted his full influence in order that the foreign workers were treated well. He considered himself personally responsible for their well being, and he initiated and proposed many plans for the alleviation of their lot. Here, we deal with the impressive examples of a truly philanthropic and well-meaning attitude, which, in the final analysis

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must be ascribed to the fact that he was a medical man apart from his work as Plant Manager.

It could indeed be argued if a man like Professor Lautenschlager, who, as plant manager, was always guided by the most humanitarian principles, should have failed in his very own specialist field, that is, as a physician. Nevertheless, the prosecution claims that it has ample reasons to raise the most serious charges against Prof. Lautenschlager in the medical field.

III. Reasons Concerning the Medical Experiments.

It has been claimed that Professor Lautenschlager is co-responsible with regard to the horrible crimes which were committed in the various concentration camps under the guise of scientific research work. Our conscientiousness refuses to accept the thought that this scientist, so respected in his special field, should have become a criminal at the age of 58, and this refusal to accept such facts is valid in keeping with the actual events.

The trap which was so well laid by the prosecution in order to prove Professor Lautenschlager's guilt is based on untenable interpretations of discussions and documents, and in particular on a random selection and compilation of documents, which have no connection to one another.

I. His Position as Director of the Plant.

Professor Lautenschlager was the Director of the Plant Community in Saurgau. The Arthur, Behring-Werke belonged to this Plant Community so that Professor Lautenschlager was the highest official of the Behring-Werke. It is in his capacity that he had to stand trial here. Yet I would like to put the question what is it for which he is accountable? Should it be the case that the Behring-Werke did wrong? With the permission

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of the High Tribunal I have examined Dr. Demnitz, the Director of the Behring-Werke, concerning those problems. Essentially, I can therefore only refer to his statements. Ever since 1929 Dr. Demnitz has been in charge of that plant right up to this very day without interruption. The Behring-Werke manufactured curative serum and vaccines against infectious diseases, especially against epidemics among human beings and domestic animals. Dr. Demnitz is an irreproachable and straightforward person whose scientific abilities are so outstanding that, even in the Third Reich, they could not dispense with his work although he was considered politically unreliable, and though the watch list of the SS listed him with a corresponding remark.

I may assume that the High Tribunal recalls the civility with which Dr. Dembits refuted the accusations of the Prosecution with regard to the correspondence and deliveries to the Bohringers - or to the Buchenwald Concentration Camp, dating back to the years 1939 - 1940. These deliveries were quite regular deliveries of vaccines for the protection of healthy persons during dysentery epidemics. Not the delivery, but the failure to deliver such products would have constituted a crime.

It was in 1943 when the Bakring-Torcs conducted experiments with vaccine, which is the action cited by the prosecution. These experiments were initiated during a conference at the Reich Ministry of the Interior on 23 December 1943. The purpose of this conference was to discuss ways and means for boosting the production of typhus vaccine. Shortly before the conference took place, Dr. Deemitz received an invitation. Now, what was the point of issue at that time?

Comprobed to to will about the typhus menace approached from the East. There were many cases of typhus at the Eastern Front. The epidemic was brought into Germany by prisoners of war, wounded soldiers and leave personnel. From everywhere the bearing-down were swarmed with inquiries, especially from civilian administrative offices requesting that typhus vaccine be supplied.

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The so-called Weigl vaccine, which was produced from the intestines of lice, was a recognized efficient anti-typhus vaccine up till then. Furthermore, the Robert-Koch-Institute produced a typhus vaccine from chicken eggs. Since 1936, the Behring-Werke had been engaged in the typhus field, at first using laboratory animals for their experiments. In 1937 they tried to breed the bacillus on chicken eggs, and in 1939 they took over the production method of the American Cox, who also had produced a typhus vaccine from chicken eggs, but using a different production method. The Behring-Werke were invited to attend conferences at the Reich Ministry of the Interior, because it was imperative that their manufacturing plant should be incorporated in the typhus vaccine production program, as otherwise the remaining institutes in Germany would not have been capable of meeting the production quota. The Behring-Werke knew of the efficacy of the Weigl lice vaccine, whilst they had no exact knowledge concerning the quality of their own typhus vaccine. When therefore Dr. Domnitz learned at that conference that Professors Gildemeister and Dr. Traubsky had come to an agreement concerning the execution of a comparative typhus experiment, he considered this as a splendid opportunity to have the Behring-Werke vaccine tested as well. The fact that a highly trained specialist could produce only enough vaccine for ten persons at the most by using lice, in one daily production, while he could produce enough vaccine for approximately fifty thousand persons by using chicken eggs in the same period, shows the progress which could be achieved in fighting the epidemic provided that the chicken eggs vaccine proved itself against typhus. Therefore, it was Dr. Domnitz's duty to request that the Behring-Werke chicken egg vaccine be included in an exact scientific experiment.

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The type of experiment was not discussed. The reason was that at the conference in question, only medical specialists were conferring, so that it was a matter of course for Dr. Demnitz that the experiments were to be conducted according to the accepted standards of a responsible medical man. For example in an area declared off limits those employees of the delousing establishments could be used for the experiment by testing on one establishment the Heigl vaccine, in another one the Gildemeister Vaccine, and in a third the Behring-Werke Vaccine "Standard Type", and in a fourth establishment the Behring-Werke "Highly Potent". Conversely, in one establishment the first, third, fifth and seventh men could be given live vaccines, and the second, fourth, and sixth men egg vaccines. In this way it would have been possible to establish in a short time as possible which one of the vaccines was the more potent, because the sudden outbreak of typhus cases in those delousing establishments never stopped. Thus it can be understood that at the conference in the Reich Ministry of the Interior, Dr. Demnitz could by no means suspect that those typhus vaccine experiments were to be conducted in a illegal manner. In this connection it is important to find out that the harmlessness of the Behring-Werke vaccine had already been tested before then, at first in animal experiments, and then in experiments on 14 volunteers and at the Ordensburg Grosssinnsee, for which members of the special staff had volunteered. Furthermore, Dr. Demnitz also tested the harmlessness of the vaccine upon his own person. He has attested here under oath: "It has always been my wish that no preparation was to leave the Behring-Werke which I would not have been able to inject into my own children."

When therefore, only a few days after the conference at the Reich Ministry of Interior the Waffen SS Hygiene Institute

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in Berlin, of which Dr. Mrugowsky was the director, ordered by telephone 530 containers of typhus vaccine from the Behring-Werke--six hundred containers for the Ministry for Eastern Territories and 30 containers for the Waffen SS Hygiene Institut, in Berlin--Dr. Dembits deduced from this fact that the Waffen SS Hygiene Institut had included the Behring-Werke vaccine in the above-mentioned experiments and tests. But even before these 30 containers of typhus vaccine were dispatched to the Waffen SS Hygiene Institut at Berlin, Berlin sent through a telephone instruction saying not to send 30 containers to the Institut, but to increase the order to 50 containers which were to be sent to "SS Oberstarführer Heyden, Camp Physician of the Buchenwald Concentration Camp". This delivery was then actually dispatched. Dr. Dembits did not have any doubts in this matter, for it was up to the Hygiene Institut and/or Dr. Mrugowsky to make arrangements concerning the vaccine. Another point was that typhus might have broken out both in the Buchenwald Concentration Camp and its immediate vicinity, which in turn was just a suitable testing ground for comparison, for example, the delousing establishments in the East. Furthermore, he could not have any doubts for the simple reason that this vaccine is quite harmless. This vaccine is actually meant to protect people from infection.

On 5 May 1942 Dr. Mrugowsky sent a report about the results of the typhus vaccine experiments which, amongst others, was also sent to the Harburg Behring-Werke. This report contained passages stating that the protective vaccinations with typhus vaccine had been conducted on persons of four different groups "within the same epidemic stage". It had been ascertained that "there was no doubt left as to the degree of immunity against typhus could be used with the vaccine produced from chicken eggs comparable to the vaccine which was manufactured by the Veigl method."

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This report made no mention at all that the experiments had been conducted in an illegal manner. Dr. Demnitz did not learn about the way these experiments had been conducted and the actual reasons.

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which had prompted Dr. Krugowsky to write the above mentioned report. As a witness in the doctors trials, Dr. Krugowsky had stated that his superior, Grawitz, had ordered him to draft the report concerning the cooperative typhus vaccine experiments in such a way that the manufacturing firms could not learn anything about the subsequently effected artificial infection. As a scientist this report reported to Dr. Dornitz only the positive knowledge concerning the protective effects of the vaccine manufactured by the Behring-Werke. Consequently, Dr. Dornitz saw no reason to instigate any special steps. He considered this report as final.

The argument advanced by the prosecution i. e. that the Behring-Werke were bound to be suspicious when they were instructed to send the typhus vaccine for cooperative experiments to Buchenwald because it had been stated at the conference in the Reich Ministry of the Interior that altogether the Reich proper was free of typhus cases, is solely based on the erroneous opinion held by Ministerialrat Sieber. All the other participants in the conference, especially the Behring-Werke, knew of the many epidemic cases which had appeared all over Germany.

Also, when the prosecution argues that there had been a "plan for experiments in agreement with Dr. Krugowsky", has been refuted by Dr. Dornitz and Dr. Krugowsky. The memorandum of Dr. Dornitz, which has been submitted in this trial, shows in particular that Professor Gildesmeister and Dr. Krugowsky had agreed upon a plan for experiments, and that means that this plan had not been discussed between Dr. Krugowsky and the Behring-Werke.

Professor Kudick had reported at the conference in the Reich Ministry of the Interior on 29 December 1941 that he had used the Behring-Werke vaccine during the two preceding months and that he had used up three thousand containers for various highly endangered people, without having once failed to establish the effectiveness of the vaccine.

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From that the prosecution draws a conclusion that Dr. Demnitz could not have failed to become suspicious because of the fact that he had been instructed to supply no more than 50 containers of vaccine for the comparative experiments, and the prosecution continues its arguments by stating that this particular fact clearly proves that an illegal experiment was to be conducted. Contesting this view, Dr. Demnitz specified in detail that the vaccinations as executed by Professor Kridicke were not an experiment but were rather a regular vaccination procedure. On the other hand, the experiment which was to use the standard lice vaccine in comparison was aimed at ascertaining a practical scientific result. However, this is only possible if the vaccinated persons are continuously under medical supervision, which was not the case for the Kridicke's vaccinations were concerned.

Furthermore, the prosecution pointed out that the Behring-Werke supplied their typhus vaccine to Buchenwald "free of charge". They claim that this would imply a purely business point of view on the Behring-Werke's part as far as their interests in the experiments were concerned. However, I was able to prove against this that the Behring-Werke had a general policy of supplying vaccine for experimental purposes free of charge. For example, on 20 May 1942 the Behring-Werke wrote to the government-sponsored Institute for Hygiene in Warsaw that they had supplied free of charge vaccine, which had been produced by the Cox method, for 200,000 to 250,000 persons.

Finally, I feel bound to contest the argument of the prosecution in its trial brief, Part III, Subsection III, where they state that the purpose of Dr. Demnitz's sending the typhus vaccine to the Buchenwald Concentration Camp was "keeping his promise as mentioned in his report given before the conference on 29. December". As I have mentioned before, the point where the experiments were to be conducted was not even discussed at that conference. In actual fact Dr. Demnitz forwarded the vaccine to Buchenwald, after the first dispatch instructions had been superseded by new ones from Berlin.

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By an affidavit of the official in charge of the Behring-Werke Dispatch Office, Andre Hilbrunner, and Dr. Dornitz's testimony, I have proved that the Behring-Werke sent only one typhus vaccine shipment to the Buchenwald Concentration Camp. This shipment was dispatched on 14 January 1942, and it consisted of seven packages with 25 cc of typhus vaccine. In order to prove my point I handed such a package to the High Tribunal. It is approximately 10 cm long, and approximately 4 cm across. The affidavit called by the prosecution, Dr. Hoven, mentioned boxes and large packages in which the typhus vaccine arrived at the Buchenwald Concentration Camp in Spring 1942. However, it is quite impossible that the above-mentioned were shipments from the Werburg Behring-Werke. In actual fact, the Ding Diary shows that Dr. Ding received vaccines from numerous other firms and offices, amongst others from the following:

- Pasteur Institute, Paris
- Hygiene Institute of the Zurich University,
- Serum Institute of the Riga University,
- State Serum Institute in Copenhagen.

The Behring-Werke did not dispatch more than another two shipments of the same size, one of which went to Dr. Ding's Berlin address and the other one to Dr. Dragowsky in Berlin. This specified listing of the names of the persons who received the typhus vaccines at the same time refutes the assertion of the affidavit for the prosecution, Dr. Hoven, who had stated that the addresses of the recipients of the vaccines had been covered addresses.

If Dr. Hoven states that the correspondence between the I. G. Farben and Dr. Ding was signed by the latter as an outsider and upon his express instructions, in order to disguise the actual address, and that Dr. Ding did not have any knowledge of the typhus problems, this fact merely indicates that Dr. Ding intentionally deceived the Behring-Werke.

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The affiant for the prosecution, Arthur Dietzsch, a concentration camp Kapo with a long criminal record, states that Dr. Ding had told him that the evaluation standards for the various I. G. vaccines were communicated to the I. G. and that the Behring-Werke had been extremely disappointed about the results. In this connection Dr. Demnitz declared on oath that he did not receive any information concerning the evaluation of standards other than Dr. Krugowsky's report of 5 May 1942. He continued, this report had been a summary information asserting that a chicken egg vaccine also effected immunity against typhus, and that this vaccine was equally effective as the vaccine derived from lice, and consequently there had been no reason for him to be disappointed; on the contrary he had been very satisfied. In order to emphasize this fact Dr. Demnitz pointed out that the Behring-Werke have been continuously distributing the typhus vaccine derived from chicken eggs up to this very day and that 90 % of the Behring-Werke vaccine production are being delivered to the American authorities. I am of opinion that these clear statements of Dr. Demnitz, who is above board and who made those statements under oath, should be evaluated to a higher degree than the rather befuddled statements made by Dietzsch, who in the Buchenwald trial himself was sentenced to 15 years' imprisonment in August 1947 because of his participation in concentration camp crimes.

The affiant for the prosecution, Dr. Kogon, who was Dr. Ding's medical clerk in the Buchenwald Concentration Camp, stated that he had written comprehensive reports about each individual patient; he mentioned that, amongst others, the Behring-Werke had been named on the distribution list of those reports. He stated explicitly that the copies of those reports went to Dr. Krugowsky to be forwarded. In its trial brief Part III, number 119, the prosecution states those facts incorrectly by claiming therein that Kogon sent statistics and tables to the I. G.

In this connection I would like to refer to the case in chief according to which the Behring-Werke never

File 1 File Lu:onschlusser.

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received any such sick reports concerning persons
who had been subjected to experiments.

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The Tribunal will recall the scientific ex-attitude with which Dr. Doernitz answered all questions put to him. Furthermore, the High Tribunal will remember his indignation in refuting the allegation that he had been an accomplice with such a criminal as Dr. Ding. Surely, the vaccines supplied could not have caused harm to anybody. Dr. Doernitz could not possibly have imagined that, subsequently, Dr. Ding artificially infected these persons who had been immunised with the Behring-Werke vaccine with living bacilli, and Dr. Doernitz credibly testified that he could not have imagined such a fact. He was quite justified in pointing out that if the Behring-Werke had agreed to and approved of Dr. Ding's experiments Dr. Ding would certainly have ordered the living bacilli for his artificial infections from the Behring-Werke, and not have confined himself to only ordering the vaccine. As it was, in Germany the Behring-Werke were the agency where such bacilli were bred up to the highest point of effectiveness. Such cultures of bacilli for breeding purposes are however a condition for the manufacture of effective vaccines.

Countering this convincing statement of Dr. Doernitz, the prosecution has pointed out that in 1942 Professor Bieling met Dr. Ding at the Berlin Hygiene Institute of the Waffen SS, and that he had been informed about Dr. Ding's experimentation methods at that time. I would like to make the following comment on this point. When war broke out Professor Bieling was drafted by the Wehrmacht, and from that time on his connections with the Behring-Werke ceased altogether. He was a high ranking military medical officer, and his visit to the Hygiene Institute of the Waffen SS took place in an official capacity. It is true in his affidavit Professor Bieling testified that Dr. Ding

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that he had been generally informed concerning the experiments not, however, that he could infer from this that Ding had performed illegal experiments on persons who had not submitted voluntarily to such tests. Even though he addressed a letter to the Behring-werke concerning Dr. Ding's negative results, this letter, according to the express testimony of Professor Bieling, did not contain reference to illegal experiments but simply made reference to Dr. Ding's scientific unsuitability. Dr. Demnitz credibly testified that Professor Bieling never told him anything from which he could deduce illegal experiments on the part of Dr. Ding either in the letter mentioned above or in a subsequent meeting. It must be added that the meeting between Professor Bieling and Dr. Ding did not take place until some time after the conclusion of the typhus vaccine experiments. The problem which is facing us here then is simply to ascertain that the Behring-werke, as Dr. Demnitz testified under oath, did not learn anything of the pseudoscientific experiments which had been performed by Dr. Ding in the Concentration Camp at Buchenwald until after the end of the war. The prosecution has cited a few other deliveries to the Behring-werke which were mentioned in Ding's diary. In its original argumentation the prosecution also wished to imply illegal conduct on the part of the Behring-werke. Nevertheless it subsequently did not go into these points further. However, the Tribunal will recall that Dr. Demnitz himself attached importance to clearing up in detail every one of these individual points.

This concerns first of all the Yellow Fever vaccine tests which are mentioned in the Ding diary from 13 January 1943 to 17 April 1943. As Dr. Demnitz testified the order for this originated not with the SS but with the Military Medical Inspectorate in Berlin. Tests as to its efficacy for mass application

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were something quite customary so that the Behring-firms suggested carrying out such tests on the employees of the Behring-firms. The Military Medical Inspectorate however, demanded that the vaccine be first subjected to conditions of extended transportation in order thereby to ascertain the quality and reliability of the transportation containers. Therefore, it ordered that the shipments be made to the "Hygiene Institute of the Waffen SS - Kaiser-Buchenwald". The Behring-firms were not aware that the experiments were supposed to be carried out on concentration camp prisoners. Dr. Dammitz did not learn until after the war through Kogon's book "The SS State" of the connections between the Hygiene Institute Weimar and the Buchenwald Concentration Camp. The general consensus of opinion in the Behring-firms was that vaccinations were to be made on various troop units who were shortly to be sent to Africa. One could not infer from the results as reported from the Hygiene Institute of the Waffen SS that experiments were made in the concentration camps, since the vaccination records simply contained the initials and age of the persons vaccinated. Incidentally, Yellow Fever vaccination is just as harmless as a Small Pox vaccination.

A further entry in the Ding diary from 8 November 1943 to 17 January 1944 mentions concentrated inoculation experiments with Fraenkel vaccines. This fact was also explained in detail by Dr. Dammitz. This was a discovery of the Behring-firm which was intended to render persons immune to the very dangerous gangrene bacillus. The vaccines were requisitioned by the German Military Medical Inspectorate for the General Medical Depot in Berlin. The SS and the Hygiene Institute of the Waffen SS then obtained the vaccines from this source. Also at that time it was not possible for the Behring-firms to realize that the vaccinations were to take place in the concentration camp. These vaccinations were likewise not dangerous.

in the contrary they offered highly potent protection to the persons vaccinated. The taking of blood tests of those persons vaccinated served to prove the protective effect which resulted. This is a customary practice and a routine matter for vaccine plants. It could not be inferred from the correspondence carried on in this matter that the vaccinated persons were prisoners. Neither does the study of the Ding diary reveal any clue which would indicate that Dr. Ding did anything else with this vaccine but to administer a completely ethical protective vaccination against gangrene.

Experiment Series IV mentioned in the Ding diary from 27 October 1942 to 9 November 1942 was allegedly carried out with liver intestine vaccine according to the Weigl process which the Behring Institute was supposed to have sent to Lwow. This was a typhus vaccine which at that time was known as the best. The Behring Institute in Lwow worked independently. The Behring-works in Karburg were at their disposal for any fundamental questions which arose. No supervision was exercised from Karburg. Such supervision could not have been exercised because of the distance factor. Moreover such supervision under the prevailing conditions-- the director was a first class reliable expert-- did not seem necessary at all.

If I consider the result of the case in chief in its entirety insofar as this concerns the use of typhus vaccines and the other vaccines mentioned in the Ding diary of the Behring-works in Karburg and of the Lwo. Institute then I must state that I can find nothing to indicate that any harm resulted from the use of these vaccines. It was also beyond the knowledge of the Behring-works as well as, which is self-evident, of the possibilities of exercising influence on their part, that Dr. Ding subsequently subjected the vaccinated persons to artificial infection, that is, made them sick, in a manner which could be described as criminal.

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For a moment I must go back again to the premises from which I proceeded; what responsibility does Professor Lautenschlaeger bear for the deliveries of the Behring-Werke mentioned above? Dr. Dennitz stated under oath that in spite of the fact that the Behring-Werke were taken over by I. G. Farben the former retained extensive independence. This was attributable to the diversity of tasks: the Behring-Werke produced natural products which were used for prophylactic purposes whereas it was the job of Hoechst to produce synthetic medicines through chemical processes. These two fields are extremely comprehensive and no one person can have a complete knowledge of such fields. Therefore Dr. Dennitz bore the full responsibility for production and Professor Lautenschlaeger, who was above all a chemist and pharmacologist and no specialist in the field of vaccines, gave the Behring-Werke free rein to the greatest extent. According to Governmental "Regulations Concerning Vaccines and Serums" neither was Professor Lautenschlaeger the responsible person for production to the government but Dr. Dennitz.

In the beginning Professor Lautenschlaeger visited the Marburg plant at 4 to 5 week intervals, later every two to three months. These visits lasted approximately two hours. During this time only fundamental questions were discussed, for example construction problems, the procurement of apparatus and ripant. Details concerning the delivery of vaccines were never discussed. Thus for example Dr. Dennitz did not even send the final report of Dr. Krugowsky dated 2 April 1942 to Professor Lautenschlaeger concerning the comparative typhus vaccine test. Neither did Professor Lautenschlaeger learn anything of the letter written by Professor Bieling to Dr. Dennitz concerning--as Professor Bieling himself stated--the slipshod and unquestioning acceptance of results by Dr. Ding in carrying out the typhus vaccine tests.

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The former director of the Behring Institute in Lwow, Dr. Haas, in referring to the Lwow Institute, made the same statements as did Dr. Dennitz concerning the independence of Karburg.

Therefore, in summing up it can be stated that not Professor Lautenschlager but Dr. Dennitz for Karburg and Dr. Haas for Lwow were the responsible persons if any error at all should be brought against these plants. However, I believe I have proved that the conduct of the responsible directors of these plants was beyond reproach.

2. Spätre 1934, at Hoechst

The prosecution further brings charges against Professor Lautenschlager as which affect his own medical sphere of work in the Hoechst Plant, namely concerning the test of Nitro-kriolin on persons suffering from typhus. The Nitro-kriolin was produced in the Hoechst Plant. This medicine had a long history behind it and was already well known as a commercial preparation used for treating various infectious diseases. When the typhus danger became more threatening, a search began in the chemical patent laboratory of the Hoechst Dye Plant for a medicine which would be effective against typhus. In ichthyosive experiments performed on mice a suit the medicine was found in Nitro-kriolin. The persons engaged in testing this preparation were given a "secrendum" which explained the details of this preparation. This contained an exact description of the makeup of the preparation, results from experiments conducted on animals, instructions

for the use on human beings and also included the experiences gained from using this preparation in cases of typhus and other diseases. It showed that the fatality rate of typhus infected mice who were untreated amounted to 91.2% whereas the fatality rate of mice

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which were treated with this preparation amounted to only 48 %. This memorandum carried the following significant introductory sentence.

"Chemotherapeutical medicines for true typhus with specific efficacy are unknown up to the present time".

In other words the Hoechst Plant of the I. G. Farben was the trail-blazer in the fight against this dangerous epidemic.

No newly discovered medicine reaches such a point in its initial stages that it may be turned over for commercial use. Even in the case of new types developed from old, well-known medicines preliminary tests on a few individuals of doubts concerning the tolerability and possible incidental effects are required. For example, a decree of the Minister of Interior from 1935 prescribes that of each quantity of the preparation Seldren produced a certain number of preliminary tests must be carried out in public hospitals recognized by the government before the preparation may be made available to the public. The Nitro-kridin preparations of the Hoechst Plants were first distributed to experienced and reliable testing personnel as an anti-typhus medication under the name of "Rutenol" and "3532" to be tested on invalids suffering from this disease. The handling of this medicine was no different than in the case of the approximate fifty other test preparations which the Hoechst Plant brought out in the years 1940 to 1945. The chief physician of the large Hoechst Municipal Hospital, Dr. Amer, who likewise was one of those who tested the Hoechst preparations, states in reference to the memorandum concerning the Nitro-kridin preparations.

"The physician who conscientiously follows these regulations can do his patients no harm".

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Among other scientists also Dr. Krugowsky chief hygienist of the Waffen-SS and Commissar for Epidemic Diseases Ost, in Berlin discovered that a chemotherapeutical drug against typhus was manufactured in Hoechst. He was interested in the preparation and received further information about it from Dr. Weber. Dr. Weber was the scientist of the Hoechst plant who established the connection with the individual testing personnel of the Hoechst preparations, gave them advice, and kept them informed of their respective experiences. Dr. Krugowsky was known to the Bayer representation in Berlin as a well-informed scientist and was described to Dr. Weber as "the best man in the medical corps of the SS". At Dr. Krugowsky's request it was agreed that in the Bayer office in Berlin a certain supply of the preparation should be made available so that Dr. Krugowsky when necessary could at any time order sufficient quantities for his troops. Dr. Weber could by no means feel any hesitation towards making the preparation available to Dr. Krugowsky. When Dr. Weber was once in the Bayer office in Berlin in February 1943, Dr. Ding, whom he did not know before, came to the office at the same time. Dr. Ding told Herr Weber he had been commissioned by Dr. Krugowsky to take care of the testing of the Hoechst typhus preparations. He pretended to be a clinical SS expert for typhus questions; he asserted that he had experience in the therapeutic field and that he had received his medical education at the Pasteur Institute in Paris. Dr. Weber's confidence in Dr. Ding was strengthened by the fact that he had been introduced to him by the Berlin Bayer representation as a qualified physician belong ing to the staff of the main medical department of the Waffen-SS in Berlin. At that time it was settled that Hoechst was to send a memorandum for Dr. Ding on preparation 3562 and test samples of the preparation in granulated form to "Dr. Hoven, Garrison Physician of the Waffen-SS, Warsaw".

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The Prosecution makes an effort to show that it was known in Hoechst that this address actually was a disguise for the Buchenwald concentration camp. As proof it introduces from the general correspondence of Hoechst a letter from the "Buchenwald Concentration Camp, Camp Physician, Weimar-Buchenwald" dated March 1944, in which an inquiry is made as to whether Hoechst is willing to exchange remaining stocks of Hoechst preparations in the camp for new ones. This document is insufficient to establish the proof for the addresses differ essentially. So this must be added that Dr. Ding told Dr. Weber that he treated cases of typhus everywhere, soldiers in the front sectors as well as soldiers on leave and taken ill in Germany. Therefore there was no reason to wonder why Dr. Ding had to treat typhus patients also in Weimar. According to his own statements he remained stationed in Berlin, and during the following time he also continually telephoned and conducted his correspondence from Berlin.

About the tests made by Dr. Ding with the preparations, Hoechst did not learn any particulars until 14 April 1943 when Dr. Ding at his own request was invited by Hoechst to inspect the laboratory for animal experimentation. At that time it came to a short discussion with Professor LAUTSCHLAGER in which Dr. Ding reported on his alleged results. The surprising result of his explanations was that the typhus preparations were not satisfactory as therapeutic drugs. This should be demonstrated, according to Dr. Ding's statements, by a series of curves which he had with him but which he did not surrender for examination. These negative results were surprising because they were considerably less encouraging than those which Dr. Weber had so far learned from other examiners. When Professor Lautenschlager asked for scientific details, Dr. Ding gave evasive answers.

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As testified by the witnesses of the conversation, the impression was left that he was no competent scientist. Therefore Professor Lautenschlager pressed for a speedy conclusion of the conversation and finally made it clear to Dr. Ding that no further experiments with the preparations were to be carried out since according to his results no such experiments appeared justified. When Dr. Ding had left, Professor Lautenschlager instructed Dr. Weber directly not to supply Dr. Ding with more preparations to be tested and thus eliminate him as an examiner. This instruction was strictly observed. This has been clearly testified by Dr. Weber. Moreover, the two file cards which were kept in Hoechst on the correspondence with and deliveries to Dr. Ding and Dr. Hoven constitute clear documentary evidence to this effect. It appears from them that following the visit of Dr. Ding no more preparations were delivered to him or to Dr. Hoven. The High Tribunal will still remember these file cards. They were kept with scientific accuracy and contain by means of codewords exact notes on every official correspondence and every conference. Subsequent to 13 April 1943 no deliveries of nitro-acridine preparations have been entered. -

Further documentary evidence is furnished by a letter from Dr. Ding dated 11 July 1944, introduced by the Prosecution. In this letter Dr. Ding writes to Professor Lautenschlager: "I trust by now that since our last meeting (the one taking place of 14 April 1943 is meant) I have heard nothing more from you in this matter."

Out of this very simple combination of facts the Prosecution makes a labyrinth which it is hard to disentangle. It alleges that Hoechst prompted purely by the desire for profits let the nitro-acridine preparations in their various applicable forms be tested in the Buchenwald concentration camp because there human beings could be made available against their will.

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In no other places could the preparation have been tested because it was ineffective. - Through presentation of many test reports I have proved that the testing of this preparation was carried out by numerous examiners with a strong sense of duty as physicians, who reported to Hoechst on their experiences. Thereby it occurred that certain unfavorable secondary effects appeared, such as vomiting and general indigestion. But this could not and ought not to prevent conscientious physicians from trying to find always new and better compatibilities in the application. The best results were achieved by the Austrian Professor HELLER, commissioned as examiner, in a Viennese reserve field hospital. Almost 2000 soldiers sick with typhus who were treated by him owe their recovery to the Hoechst nitro-sorbidine preparations. Dr. Weber, who personally in Heller's clinic convinced himself of the effects of the preparations comes to the conclusion that the complaints of bad compatibility of the nitro-sorbidine preparations were due far less to the preparations themselves than to the lack of care on the part of the nursing staff.

In Hoechst it was not known that Dr. Ding had conducted his experiments in a concentration camp. But even if one had been aware of this, one would not have withheld the preparation from concentration camp inmates suffering from typhus, at least not until one had acquired knowledge of the unsuitability of Dr. Ding. The Hoechst gentlemen realized the unsuitability of Dr. Ding during his visit on 14 April 1943, and they immediately drew the consequences of their impression.

That Dr. Ding was actually not only an unqualified scientist but even a criminal, that, on the other hand, was not realized by Professor Lautenschlager and his assistants. This the witnesses, who attended the conversation, Dr. Fassganger and Dr. Weber, confirm concurrently. Dr. Fassganger says:

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"In the conversations Dr. Ding gave evasive answers. I did not get the impression that he was a serious and responsible scientist. But that Dr. Ding conducted the tests in the unscientific and ethically entirely unjustifiable way as later described by Dr. Kogon in his book 'The SS State', was never indicated during the conversation".

And Dr. Weber states:

And Dr. Weber states:

"Dr. Ding revealed himself during the conversation to be an inexperienced, ambitious career man without the professional qualifications required for an examiner of drugs. But by no means did it in the course of the conversation become obvious or even probable that Dr. Ding applied our meridine preparations to artificially infected persons, these persons being concentration camp inmates."

It could never occur to serious scientists that Dr. Ding at a time when typhus cases were abundant, infected human beings artificially with typhus in order to cure them afterwards with the Hoechst nitro-meridine preparations. This idea was completely alien to their way of thinking. Apart from the criminality of such procedure, Dr. Ding's experiment was from a medical point of view completely useless. For the excessively strong infection through injection of fresh blood from typhus patients into the veins of the unfortunate victims could not have been combated either with the Hoechst or any other drugs because natural cases of such infections occur.

Since Dr. Ding in Hoechst had been unmasked as an unqualified examiner, although not as a criminal, he was from 14 April 1943 by order of Laubenschlager at least separated from the group of physicians receiving test preparations from Hoechst. However,

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the competent consultant, Dr. Weber, as he himself has testified in detail, did not break off connections with Dr. Ding suddenly. It is absolutely sure that Dr. Ding did not receive any more test preparations of any kind from Hoechst. But Dr. Weber was of the opinion that the tables and curves promised by Dr. Ding had to be carefully checked. Dr. Weber testifies that this was the reason for his private letter to the chief surgeon Professor Biehl, submitted by the Prosecution, in which he refers to the documents promised by Dr. Ding. Dr. Weber had also the intention later in Berlin personally to look over the original documents concerning Dr. Ding's test results, to which he had been invited by Dr. Ding. But this never took place, as testified by Dr. Weber.

Considering the political conditions prevailing in Germany at that time ^{or} it was not simple for the witness Dr. Weber to obey the strict order of Professor Lautenschlager to immediately eliminate Dr. Ding as examiner of the Hoechst preparations. Nevertheless Dr. Weber in a way worthy of recognition succeeded in excluding this disreputable SS-physician at least from the position as examiner. Following his visit in Hoechst Dr. Ding called up Dr. Weber a few more times and wanted typhus preparations applicable by way of injection. Dr. Weber dissuaded him from insisting on this wish, although such Hoechst preparations were being tested at that time in other places. On the other hand Dr. Weber complied with personal wishes of Dr. Ding in order to avoid further resentment. He supplied him with scientific literature, cannulas for venipunctures and millimeter paper. Even these supplies have been carefully entered upon the two Hoechst file cards.

The Prosecution has attempted to substantiate its allegation that Hoechst retained Dr. Ding as examiner even subsequent to 14 April 1943 through reference to these small favors. Among other things it quotes a letter from Dr. Weber to Dr. Ding dated

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15 June 1943 which reads: "Also your other requests are being worked on and it will be possible to fill them within the next few days". However, the card files clearly indicate that this referred to the shipment of Carthagen and Neutrigen which Dr. DING had requested for the training of animal hides. This was also unequivocally confirmed by the witness JECK.

It seems to me that the actual date in which the "Therapeutic tests with Akridin-Granulat and Ruben-15", referred to in the Ding diary under the dates from 24 April 1943 to 1 June 1943, were conducted has not been clarified and cannot be clarified. In this instance the Ding diary contradicts Dr. DING's letter of 11 July 1944 which was introduced by the prosecution. In this letter Dr. DING writes that "the therapeutic tests had been carried out during the time from January until the end of April 1943: "As you know the tests conducted on 39 persons suffering from Typhus were negative." This would seem to indicate that Dr. DING was of the opinion that the results of these tests were already in hand at the time of 14 April 1943. One might rightfully surmise that this series of tests was already in progress when Dr. DING arrived at Buchenwald. At any rate, these circumstances cannot be explained, as was done by the prosecution in its Trial Brief, Part III, No. 135, Paragraph c., as continuing co-operation between Professor LUTHERSCHLAGER and Dr. DING after the latter's visit. The contrary was proved.

There is yet another quite neutral and impartial testimony which shows that the break between Buchenwald and Dr. DING in the field of therapeutic tests came only after 14 April 1943. After the war the medical clerk of Dr. DING, Dr. Edgar BECK published his well-known book "The SS-State". In the specific paragraph of the 2nd 1947 edition of his book, which I introduced, Dr. BECK mentions that after the publication of the first edition he had learned

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from Dr. WEBER and Dr. FUGGELINGER that BOECHST had been of the opinion Dr. DING was treating soldiers suffering from Typhus in St. Louis. I further quote the following paragraph on page 160 of the book.

"Can they had to realize from the obviously suspicious circumstances that the tests were taking place in the concentration camp Buchenwald they broke off a relationship - in agreement with their superior LAUTENBACH-SCHLUGER. From my activity with Dr. DING-SCHLUGER I can confirm as true the last claim."

The prosecution further tried to prove that the Boechst plant used cover addresses in shipping the Mierckridin preparations to Dr. DING. I was able to prove the contrary, on the one side by the two file cards, to which everyone had access, and on the other hand through the testimony of the director of the Boechst Chemical Office, JACK. When correspondence concerning new preparations was classified as "confidential" in Boechst this was not done, as is claimed by the prosecution, in order to conceal something illegal. It is a common practice to keep every preparation under test confidential as long as possible in order to prevent the competitors from learning about it too soon. Another viewpoint in maintaining secrecy was to avoid false hopes and expectations among the population until it has been established whether a preparation can actually be used with success against a certain disease.

The prosecution now thinks to pass a medical substantiation for its claim that BOECHST knew the result before Dr. DING's visit and that it cooperated with him. It refers to Dr. WEBER's advice to DING to the effect to cancel the threat of the typhus patients not

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only after the disease was three days old but sooner. The prosecution has introduced a telegraph message to this effect and argues that at such an early stage it is impossible to diagnose typhus. Against this contention there are numerous statements from experts. The witness Dr. BIEL, probably had gained the best insight into methods and success in the treatment of typhus patients. He always held the opinion that patients who are infected surrounded by contracted fever and had lice should as a matter of principle be treated at once with Nitrochlorine. Also Professor BIELING in his expert opinion states that a conscientious physician should consider any newly infected patient in the neighborhood of typhus patients as a typhus suspect and should administer typhus treatment at once without waiting for ultimate substantiation of the diagnosis.

The prosecution attaches special significance to the fact that the correspondence between HUGENSTADT and Dr. HUGENSKY did not cease after Dr. LING's visit. It is deduced from this fact that HUGENSTADT continued the tests with Dr. LING. I must emphatically refute this conclusion. Dr. HUGENSKY was the Commissioner for Hygiene for the entire Eastern Territories, and the Supreme Sanitation Officer of the Warrent section; he also was a professor at the University of Berlin. Dr. LING merely was one of his many subordinates in one of his offices. It was known to HUGENSTADT that Dr. HUGENSKY had given the Nitrochlorine preparations to various hospitals in the Eastern Territories and to Berlin and to do for tests. HUGENSTADT was interested in getting the results of these tests. It therefore is completely wrong to hold Dr. LING and Dr. HUGENSKY in the breath. The prosecution did not offer any evidence at all to show that also Dr. HUGENSKY

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himself conducted any illicit tests with the Nitro-caridia preparations or that the correspondence between SUBCAST and Dr. KROGASNY offers any proof for illicit tests.

In concluding the discussion of questions connected with LING's Nitro-caridia tests, I must yet refer to Professor LAUTENSCHLAGER's affidavit of 2 May 1947. Contrary to the testimonies of the witnesses whom I mentioned he states under section 11 that after his discussion with Dr. LING it had been clear to him in view of Dr. LING's explanations concerning artificial infections that he was conducting his clinical tests not on soldier typhus patients but on artificially infected persons. In itself this statement in the affidavit by the defendant LAUTENSCHLAGER does not alter anything with regard to the defendant's attitude in the Dr. LING incident, and which, as I have proved, was entirely correct. In any case the immediate severance of relations with him as a tester has been substantiated, but I must again at this point call attention to the bad state of health, which is already known to the Court, and to the other circumstances from which the defendant has been suffering for a long time. The High Tribunal will remember my various petitions in this respect and also will recall the medical certificates.

I have reason to believe that the defendant LAUTENSCHLAGER has made an error in preparing the affidavit. In this respect the witness Dr. KROGASNY has thoroughly explained in what connection the term "infection by desia" actually was used and how it must be construed. I shall deal in detail with this question in my Trial Brief. In view of these facts one cannot consider or assess LAUTENSCHLAGER's statements as

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a confession which conforms to the truth and which would show that he had recognized Dr. LING as criminal. At any rate he cut off his relations with Dr. LING after the latter's visit. Moreover, I cannot find even under most thorough scrutiny any indication in Dr. LING's diary that after that date he used HONCHST or Warburg preparations in connection with illegal tests. With regard to this last point Dr. DEBATA declared that after 14 April 1943, when Honchst had decided against LING as a tester, the vaccine comparative tests had already been completed for a long time. As early as November 1942 Dr. LING obtained yellow fever vaccines from the Army Medical Inspector's Office and not from the Behring plants; he also received gangrene vaccines on the round-about way from the Army Medical Inspector's Office. Dr. DEBATA declared that the Behring plants probably would not have turned down direct requests for these preparations by Dr. LING since as a registered physician he was entitled to ask for them. Furthermore, she could find nowhere any sign that Dr. LING had done any harm with these vaccines after 14 April 1943. In conclusion may I state that the prosecution's charge that Professor LAUTENSCHLAGER had intentionally closed his eyes to criminal experiments is not correct. The contrary is a proven fact. As soon as Professor LAUTENSCHLAGER became suspicious of the tester Dr. LING he broke off all relations with him. At the same time, I maintain, on the basis of extensive evidence that Professor LAUTENSCHLAGER at that time did not realize at all that Dr. LING was criminal, but merely recognized that Dr. LING was not a man with sufficient scientific qualifications for the position of a tester. All the more value must be attached to his watchful and resolute way of acting. It is to Professor LAUTENSCHLAGER's credit that

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by severing relations with Dr. LING in time. He dissolved a relationship between the Hoechst Circle and a physician who had disgraced himself. He thus demonstrated his unconditional conscientiousness and scrupulous conception of the ethics of the medical profession.

There remain yet two other groups of letters from the medical field of activities in Hoechst which the prosecution introduced as evidence. The first group comprises documents concerning the tests with Hoechst medications in mental hospitals. I can be very brief in this respect. The prosecution tries to see also in this instance a symptom for Hoechst's efforts to have its medications tested on non-volunteers. Through the testimony of Professor Dr. HERMAN-FACHUS, I have proved that these medications were used successfully on patients of the Neurological clinic of the University of Frankfurt am Main as shown by the case histories, in other words that testing and therapeutic success were concurrent.

The second group comprises documents which concern tests made by Dr. VETTER who formerly belonged to the Leverkusen plant with Hoechst medications. In this connection I refer entirely to the case in chief by the defense counsel for the defendant HERRMANN. He has proved that nothing was known in Leverkusen of criminal acts on the part of Dr. VETTER. Dr. VETTER was not selected tester by Hoechst but by Leverkusen and among other things received also Nitroxytricin preparations from Leverkusen. For this reason Hoechst was not obligated to conduct a further check since it was known there that Dr. VETTER prior to becoming a soldier had been a reputable co-worker at Leverkusen. Of his illegal tests nothing became known in Hoechst either.

May I say a few words yet with regard to the use of Nitroxytricin preparations by Dr. VETTER in the case of tuberculosis patients. To do this exists no

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specific means of combating pulmonary tuberculosis. When Dr. VETTER in his own research activity noted certain successes in the treatment of pulmonary tuberculosis patients this work was only to be welcomed and Hoechst was justified in making available the medicines for this purpose. The prosecution itself did not claim that Dr. VETTER treated any but persons who had become sick from natural causes. It is only of the opinion that the medication was worthless and did not show any success in the treatment of patients suffering from pulmonary tuberculosis. In contrast to this opinion I have introduced two letters of a former concentration camp inmate who previously had been treated by Dr. VETTER against tuberculosis with the Hoechst Nitro-sulfon preparations. He remembered the great success of the treatment and asked Hoechst again for this medicine during the last year when he experienced relapse. Herewith may I be permitted to conclude the discussion relative to the medical tests.

IV. The Question of Accountability as a Member of the
Vorstand of the I.G. Farben and of the T.M.

I can be brief as far as the remaining charges of the indictment against Professor LAUTENBACHGER are concerned. Since 1938 Professor LAUTENBACHGER was a member of the Vorstand of the I.G. Farben and of the T.M. In both boards he represented only his special fields. No evidence what so ever has been introduced to show that he made contributions on any other subject. Thus his accountability can only be considered as part of the discussion of the accountability of the I.G. Vorstand in the whole. In this connection I refer to the general statement of my colleague Dr. von MÖTZLER.

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V. Auschwitz.

Professor LAUTENSCHLAGER was never concerned with the employment of concentration camp inmates. May I be permitted at this point to correct an error which the prosecution has made. In its Trial Brief, Part III, the prosecution claims under section 194 that Professor LAUTENSCHLAGER had paid a visit to Auschwitz. The prosecution itself has never offered any proof for this statement. Professor LAUTENSCHLAGER has never been in Auschwitz.

Nor did the prosecution offer any evidence to show that Professor LAUTENSCHLAGER had concrete knowledge of what went on in the concentration camps, especially about the massings. When in one of Professor LAUTENSCHLAGER's affidavits there is such a reference the same applies here what I have already said about the affidavits of the defendant himself. Director J. ARNT testified under oath that this had merely been one of the very common rumors such as were encountered by many Germans in one form or another toward the end of the war.

Your Honor,

I know that many people who have been close to the defendant LAUTENSCHLAGER and who know him well regard it as a deep tragedy that this man was placed in the dock at Nuremberg. On the other hand it is clear that the horrible occurrences in the concentration camps demand expiation. Thus, the question came up whether perhaps also the medicinal industry had had knowledge of these events and had knowingly supported them. I hope to have proved that the reputation of the Hoechst Werke and of the Farbwerke Hoechst has emerged unscathed from this scrutiny.

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and that it will be found that Professor LAUTSCHLAGER always displayed the attitude of an honorable and conscientious physician. I would be happy if your judgment would confirm this opinion.

I ask for the acquittal and complete rehabilitation of Professor LAUTSCHLAGER.

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CERTIFICATE OF TRANSLATION

4 June 1948

we, Ludwig Heymann, Robert E. Clark, Thyra Thyssen, and Leslie H. Lawton,
hereby certify that we are duly appointed translators for the German
and English languages and that the above is a true and correct translation
of the FINAL .LEA LAUTENSCHLAGER.

Ludwig Heymann
35096

Robert E. Clark
E-397939

Thyra Thyssen
00638

Leslie H. Lawton
E-397990

File 100, Mann (Gentish)

Case 6
Defense

Final Plea

For the Defendant Wilhelm H. MANN

Before Military Tribunal No. VI

Nurnberg,

Case VI

June 1948

by Dr. Erich BERNOT
Defense Counsel.

Young



May it please the Tribunal!

In my opening statement I said that the "BAYER" Sales ~~Representatives~~ ^{Combines} had a special status within the organization of the IG as a result of the fact that this ~~combination~~ ^{Combines} had a certain independence. Thus the chief of this ~~combination~~ ^{Combines}, the defendant KAHN, also had a certain special status within the Vorstand of the IG. This special position of KAHN, which caused his entire strength and interest to be directed only toward Bayer, must be taken into consideration in the judgment of KAHN as a member of the Vorstand, in the judgment of his knowledge of IG matters and in the judgment of his responsibility for such matters. This does not ~~diminish~~ ^{emphasize} the importance of his position; it merely puts his position into the right light. KAHN was active solely on behalf of Bayer. His other positions, such as that of Aufsichtsrat of only pharmaceutical companies, were closely connected with his activity as chief of Bayer. KAHN did not hold any high positions in political or economic life. With regard to the general ~~and especially with regard to count one of the indictment~~ questions in these proceedings I refer to the statements which ~~and myself in the case of KAHN~~ my colleagues have made heretofore. I do not wish to bother the Tribunal with repetitions.

Under Point I, the Prosecution has accused KAHN of having carried out political propaganda, of having carried out espionage, and of having furthered export for the purpose of thereby contributing to the preparation of HITLER's aggressive war. Propaganda activity on the part of KAHN is seen mainly

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in the fact that KAHN belonged to the Werberat of the German economy. But the evidence submitted by the Prosecution in this connection shows that the Werberat was not a political propaganda instrument. In accordance with its composition of men of the economy its task was to give jointly advice on specialized advertising on behalf of their enterprises. I have unequivocally clarified this nature of the Werberat by means of the statements of its president, HUNKE. The Dayer's advertising (Dayerwerbung) itself was based on pure business aspects. It successfully prevented itself from being influenced in any way by the party agencies. That has also been proved.

The documents submitted by me show that Dayer's foreign representatives never carried out espionage. The examination of the matter showed unequivocally that the alleged spies, HANDELER, SCHUB, ~~ROSENBERG~~, ~~K. K. K.~~ and BOMKE, who represented Dayer in South America, were never arraigned for espionage. ~~They~~ ^{They} were merely temporarily detained in the course of a general check-up after those countries entered into the war. They were left completely undisturbed, and at the present time are again carrying on their business in South America. The Prosecution's suspicions have proven unfounded.

It has been proved to what a large extent KAHN attached the greatest importance to the behaviour of the representatives abroad who were not to participate in any kind of political activity and who were to avoid any kind of violation of the rights of hospitality. His various letters to the representatives abroad were only intended to avoid, wherever possible, friction with the Auslandorganisation (Foreign Organization) and other party agencies.

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That is also how these letters were looked upon by the recipients. It was far from KAHN's thoughts to engage in party propaganda. Beyer's so-called "political" contributions abroad for schools, German clubs and other social institutions, which were so strongly emphasized by the Prosecution, amounted, as I have proved, to only the negligible sum of 70 Reichsmark per country per year. In this connection further remarks are superfluous.

It is also not correct that the business policy of Beyer was guided by aspects of party politics. The fact that KAHN entered the party as early as 1932 is no proof of this. The evidence submitted both through witnesses and through documents has shown without doubt that KAHN never took an active part in the party. His entire attitude shows that he was never a so-called "Nazi". In this connection I would only like to mention one fact, namely KAHN's attitude with regard to dismissal of Jewish employees. KAHN submitted to the pressure of the party only against his own will and only then when it was no longer possible to circumvent the party pressure. In all cases he granted generous compensation or transferred the person concerned to a foreign country which gave the individual concerned the opportunity to start a new life abroad. I have given examples of this by means of several exhibits.

I only want to touch briefly on Beyer's alleged support of HITLER's plans. 70 % of the Beyer concern has at all times been an export concern. HITLER's government did not bring with it an increase. Beyer's export plan during the war

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only served the purpose of maintaining the representations abroad at all.

MANN had absolutely nothing to do with the re-arming of Germany. (The Wehrmacht's requirements of medicaments increased, which was necessarily brought about by the introduction of conscription. Mayer did not have a "Mob" plan nor a counter intelligence commissioner.) The only measure in connection with a possible "Mob" case concerned the freezing of personnel, as is customary and required in all countries. Mayer concluded one single "Mob"-supply contract with the Wehrmacht, (in one of the less important fields) This contract, however, was far from covering the Wehrmacht's requirements at the beginning of the War. The fact that Mann in no way thought about a war is clearly shown by two facts: His attitude on the occasion of the visit of the Englishmen in Leverkusen in July 1939, and his intention to start his own pharmaceutical production enterprise in France shortly before the war.

More I need not say to count
One of the indictment.

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Your Honors, I shall now deal with the charges which have been brought against MANN under Count II of the Indictment, the expropriations in France and Russia.

As regards Russia, the Prosecution bases its charge essentially on the fact that MANN was chairman of the Commercial Eastern Committee of the I.G.

The Prosecution completely misunderstood the nature of this Committee. The presentation of evidence, in particular the hearing of the witnesses KELLNER and de Haas, the business manager of this Committee, has shown that the Eastern Committee (originated with the Eastern Liaison Office of Bureau No 7, an office which existed long before the Russian campaign and furthermore that this committee) was mainly composed of the heads of the individual sales combines of the I.G. why this Eastern Committee was called into existence is shown by the minutes of the Vorstand meeting of 17 December 1942 (MANN Kbh. 310). It had merely the task of establishing a connection between the sales combines in regard to the ever increasing economic revival of the occupied Eastern territories. The committee had no decisive function. The only decision it passed and which clearly illustrated its function referred to the setting up of a sales organization in Riga as the successor to the previous I.G. agency there. This High Sales Office did nothing but sell merchandise ^{to} the Eastern territories. It supplied the indigenous population with the most urgently needed commodities, but it took nothing whatever from the occupied Eastern territories. Nor did the Prosecution present any document to prove that this committee

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had anything to do with the setting up or the operation of Eastern monopolies. This also applies to the 4th interest of the I.G. in the Continental Cel A.G. which has been dealt with already by my colleague Dr. FLASCHNER.

The Prosecution proceeds mainly from the situation report of 3 January 1943. An unbiased perusal shows it to be nothing but a report of informations which de Haas and other WIG employees had received from the Ministry for the Eastern territories and other government agencies in regard to economic matters in the East. There is nothing extraordinary about these informative reports. (In free countries with a free press there is no need for such reports in order to inform the industry about the situation and about the economic development. The only thing that matters is whether Mann identified himself with this report. The Prosecution has not presented any evidence to prove that. Not only so, but the author of the report, de Haas, stated in the witness box that the report did not reflect any expressed views of Mann and did not represent any opinion of the Eastern Committee. (For the rest, if Mann's name figures once in the minutes of a Vorstand meeting under the heading "Eastern questions" and if the setting up of the "Chemie Ost" is dealt with under the same heading, that is no reason at all to infer that Mann had any connection with this company.

Nor did the Prosecution prove that this company did anything which could be defined as embezzlement.) The charges against

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MASE regarding alleged spoliation in Russia are therefore unfounded.

Now to the Rhone Poulenc business. Here, the Prosecution faced a difficult situation right from the start. Here the Prosecution was not dealing with the common fact of spoliation, i.e. the taking away of objects. Nor were there any acts of violence against life, limb and property. It was a matter of the representatives of two companies confronting each other and making a contract in behalf of their respective companies. No German authority had called upon them to do so, no pressure, no measures either against themselves or against their companies compelled them to act as they did. The Prosecution was compelled therefore to represent the conclusion of this Agreement as a consequence, not perhaps of open, but of "veiled threats and transparent tricks", and to designate the voluntary payments for the licences as payments of "tribute". Everything the defendant MASE did (in order to reach an agreement on the principle of private enterprises aiming at a collaboration of the two companies in the sphere of pharmaceutical business and making a conscious effort to keep clear of German official agencies from whom he expected no good for the other party to the contract, all that) is now being construed as being trickery of his part, a particularly objectionable arbitrary action!

Now, then, is the actual result of the evidence presented?

Three contracts were made between POULENC and MASE:

Contract I, (dated 31 December 1940, ratified

Final Pica MARK

25 February 1941.) Contract II, (made orally on 25 February 1941, confirmed by exchange of correspondence on 23 March) and (17 April 1941.) Contract III, the (so-called) Therapit-agreement, (made out in writing on 8 and 19 February 1942.) The conclusion of these contracts was in all cases preceded by extensive oral negotiations and an exhaustive correspondence. The Rhone-Poulenc executives signed these three contracts of their own free will, under no stress or duress whatever. No representative of a German government agency or of the occupation forces ever took part in the numerous conferences of the contracting partners or was present at the drawing up of the contracts. Even the I.G. was not represented, either by MARK or any other executives, at the signing by Rhone-Poulenc of the contracts or during the writing of the many letters which preceded the agreements. At no time was Rhone-Poulenc urged by anybody to fulfil the agreements. Between 1941 and 1944 they paid the licence fees every three months without any reservation!

Nor does the evidence presented in court prove that MARK at any time took, or even only threatened, direct or indirect measures against Rhone-Poulenc in order to cripple or curtail their production or their sales.

Neither by word of mouth nor in writing did MARK and other BAYER representatives ever threaten Rhone-Poulenc with imminent or subsequent curtailments of their business should the agreement fail to materialize.

It may be left open whether German Government agencies thought of the possibility of exerting pressure or proposed ^{to Mann} to do so. At any rate, MANN never availed himself of pressure of this kind. The report on the September 1940 journey offers no evidence for this. First of all, MANN did not have anything to do with it, in particular not with its composition. He learned about it for the first time here at Nuremberg. (It was never received at Leverkusen, as Werner SCHMITZ has testified.) All that can be inferred from the contents of the report is that Government agencies thought of exerting pressure and wanted to make it available. But that such pressure was actually exerted, this the report does not prove. Nor does the report prove that MANN demanded that pressure be exercised. Not one word in this exhibit intimates furthermore that MANN threatened Rhone-Poulenc with pressure. The document even fails to prove that MANN in his dealings with Rhone-Poulenc did even speak of the possibility of pressure.

Now, the theory of the Prosecution intends to show that MANN wanted to win over Rhone-Poulenc by expressing his apprehensions of the considerable disadvantages which Rhone-Poulenc might have to face by the introduction of a new French patent law and as a result of the peace treaty to come. In this ^{connection} the Prosecution makes reference to ~~three documents~~. ~~On the strength of the minutes written from memory of M.~~ ^{These have been examined} ~~DS, dated 5 October 1940. It is said that the thought~~ ^{had first been expressed} "that a new French patent law would be enacted which,

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in a similar way as the German law, would be extended to the protection of pharmaceuticals, with the result that Rhone Poulenc would be exposed to considerable claims for damages caused by their long imitation of I.G. products."

The indication to the effect that such a patent law would be enacted in France, (making thereby the imitation of original Dayer products impossible in the future, such a statement, made by MANN in good faith) could not by any means induce Rhone Poulenc to embark upon discussions and contracts with MANN. Rhone Poulenc, by consulting the French Government, could ascertain without difficulty that introduction of a patent law of this kind could not be demanded at all by the Germans, since such demand did not fall under any of the provisions of the German-French armistice terms. As is shown by the answer dated March 1941, which was submitted by me, of the Reich Ministry of Justice to the Dayer request, the Foreign Office for these reasons engaged neither the Armistice Commission nor the French Government in this matter. So Rhone Poulenc, first of all, could have waited calmly to see whether the German Government really approached the French Government in the matter of introducing a patent law for pharmaceutical compositions. This was not the case, however.

It was without any German interference that later on, that is early in 1944, the French Government of its own accord did enact the patent law in question. This law continues to be in force even today. It answered to the very requests of the French

pharmaceutical industry and to that of Rhone Poulenc ~~itself~~, as has been proven by many documents. Rhone Poulenc recognized itself that this lack of protection in the pharmaceutical field was contrary to the practice of all progressive countries of the Western world, and that it could not be maintained forever. MANN's pointing out that one had to reckon with a patent law cannot therefore be regarded for either objective or subjective reasons as an exertion of pressure on Rhone Poulenc. He was pointing at future facts or possibilities which is absolutely justified in economic life.

The same applies to MANN's other allusion, to the effect that some provisions regarding a certain indemnification for the time past must be expected to be included in the peace treaty to come, and that the French side some day would perhaps regret not having made use of this favorable opportunity for an agreement. Thus MANN merely referred to a regulation in the peace treaty to come, that is say to a regulation in the distant future by the two governments concerning the settlement of the damage done by the imitation of German patents and the expropriation of the trade mark "Aspirin", according to Article 272 b of the Versailles Treaty. The evidence contains not a single word to the effect that MANN had, perhaps, told the French that they were going to be expropriated by the provisions of the peace treaty, or their production be reduced or any such things. Nothing of the kind, merely a supposition that the French side would perhaps regret one day not to have made use of that possibility for an agreement.

Now I ask: Was this idea of MANN's about a possible later remorse for the Frenchmen an inevitable compulsion to sign the contracts in order to ward off attacks on the legal claims and benefits established by Control Council Law No. 10 or on the existence of their enterprises? Had the Rhone Poulenc to sign the agreements with Bayer for reason of an allusion to possible protection by patents and to possible provisions of a peace treaty which was still rather nebulous? Does not the fact that a Frenchman, M. Faure BRAULIER, was the go-between, a man whose national attitude the Prosecution did not challenge, who cannot be called a QUISLING or Collaborator by anybody, does this fact not prove that MANN did not wish for any infringement upon the freedom of action of the Rhone Poulenc? Nor is this altered by the fact that MANN, in the conference of 29 November 1940, allegedly said that he had to return his commission to the German authorities as a failure. First of all, it has not been proven conclusively that MANN made this remark at all. The witness Ferner SCHMIDT has stated that the records do not give the exact truth with respect to this point, and that MANN, according to his precise recollection, only said that he would have to inform the government about the result of his negotiations. But even if he did use this expression, it could never have been interpreted by the Rhone Poulenc as pressure. It was only a matter of course for MANN to report to the

German authorities on the results of his discussions, just as the French did to their government (prosecution exh. No. 1272). That is nothing out of the common. I think, I know that an Allied businessman also has need of a special permit and must bring his projects in line with an authority if he wants to conclude private business in Germany. MANN's words did not amount to more than that, but on no account did they mean that he intended to urge his government to take steps in order to force the Rhone Poulenc to give in. The following must also be taken into consideration:

When the Rhone Poulenc rejected MANN's first plan of a joint sales association on 29 November 1940, MANN did not return his commission to the German authorities as a failure, (thus, as the Prosecution avers, exerting pressure) but he desisted from the pursuit of his first plan and said frankly to the French that he fully appreciated the reasons for their rejection. This is disclosed by MANN's letter of 14.12. to the Rhone Poulenc on 18 December 1940. In consideration of this attitude of MANN, his utterance of 29 November 1940 cannot be interpreted as pressure. Nor could the French see any pressure in MANN's words as MANN immediately agreed to their own suggestion of paying licenses and did not insist on the effectuation of his own plan of a sales association.

The negotiations concerning contract No. I were not definitely ended on 29 November

1940. In effect they were protected until 25 February 1941, the date of the final discussion of this contract, as is shown by the record of this day. (MANN Exhibit 227).

Moreover memoranda were exchanged before the contract was signed, including the memorandum of 2 December 1940 which the prosecution has submitted (Prosecution exhibit No. 2167). ~~Further~~ ^{Further} letters were exchanged with respect to the provisions of the contract. All these data do not contain or even hint at threats to the effect that the Rhone Poulenc would have to reckon with any measures whatsoever in case an agreement with Bayer could not be effected.

Neither can it be proven indirectly that the Rhone Poulenc was under constraint. The prosecution says that MANN suggested a sales association with a ratio of 51% to 49%. In order to avert this threat, the Rhone Poulenc, the Prosecution says, paid licenses. Later on, in contract No. III, MANN allegedly wanted a mutual participation in the stock capital to some extent. In order to avoid this danger, the Rhone Poulenc is said to have agreed to the establishment of a joint sales association in the form of the Theraplix. In both cases, this procedure allegedly seemed to be the "lesser evil" to the Rhone Poulenc. Such an interpretation would mean that it must already be considered a threat to the Rhone Poulenc that MANN's proposed negotiations aimed at higher targets than the Rhone Poulenc was willing to concede. When two parties negotiate about an agreement and meet each other halfway, or if two parties in a court-case conclude an agreement, is it possible to say then that the outcome was the result of the applied pressure of raised demands? Each of the two parties, from their different angles, will call this

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compromise the "lesser evil" in some way. The fact that one party attained less than it wanted and had to give less than it intended, cannot be an indication of the fact that one of the parties acted under pressure.

In addition, we still have to investigate whether the preamble of agreement I (Prosecution exhibit 1271), as the Prosecution asserts, offers any indication of the fact that the representatives of the Rhone Poulenc concluded the contract in order to avert ~~the~~ ^a relevant evil which threatened their enterprise, their liberty and integrity. I cannot find anything like that to be the case.

The opinion of the I.G. on the suspension of the pre-war contracts, as expressed in the preamble, cannot be construed as ~~an obligation~~ ^{State of emergency}

~~for~~ the Rhone Poulenc to conclude a new agreement, in particular as the Rhone Poulenc, under these pre-war contracts ~~only~~ had to pay licenses to Bayer, ~~and~~ ^{after the addition of which} according to the French Law ~~and according~~ ^{free of charge} to its ~~own opinion~~ ^{it}, was permitted to imitate Bayer products without any permission of the I.G. Even the covering letter which the Rhone Poulenc addressed to Bayer on 18 January and which the Prosecution calls the "strongest protest", is no proof of the fact that MANN exerted any pressure on the Rhone Poulenc. First of all, this letter clearly discloses that the words crossed out in the preamble, "in agreement with the German authorities", only referred to the invalidation of the former contracts.

The fact that Rhone Poulenc writes that MARE's remark about the opinion of the German authorities, in particular about the returning of the trade marks and about the breaking of the old contracts, was an important factor in their decision, can only relate to MARE's allusion to a planned patent protection in France and to a probable regulation in the future peace treaty, which was to be anticipated by a private economic agreement.

I should like to explain this with an example: If an unprotected inventor tells the exploiter of his invention that, according to the best of his information, a law is to be expected which will protect his invention, and ~~is to grant~~ ^{grant} an indemnification for the time elapsed, ~~and if~~ ^{then} the inventor suggests to the exploiter he had better come to a more favorable understanding with him now -- as for instance by giving him a share in the business, and if the other complies with this demand, does that mean that the agreement had been concluded under pressure or duress? This would not be the case even if he had taken steps for the establishment of such a law in order to protect his interests. Neither will this fact be affected by the circumstance that the agreement says that it has been concluded on the basis of the inventor's saying that a law covering this agreement is to be expected. It can be left undecided whether such an agreement would be void under civil law if the apprehension turns out to be unfounded and no such law is made. This would only concern the civil side of law, but would not be a punishable fact.

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Besides other correspondence of that time, the said letter from the Rhone Poulenc of 18 January 1941 is a good example of the fact that the Rhone Poulenc was not compelled to sign the agreement. The passage contained therein "we did not want to delay the signing of the agreement by correspondence" shows that the Rhone Poulenc was well aware of the possibility of postponing the negotiations and of averting the signing. Moreover, MANN's prior letter to the Rhone Poulenc of 9 January 1941 (Prosecution exhibit No. 1273) proves that the consent of the French authorities was necessary in order to make the agreement valid at all in accordance with the opinion of both parties to the agreement. Rhone Poulenc was to take steps itself to this effect. It was in its power therefore to determine whether and on what date the agreement was to become valid. This shows that it was absolutely unhampered in its decisions at that date. By delaying tactics, Rhone Poulenc would have been able therefore to prevent the conclusion of the agreement or to postpone it to a later date. But it did nothing like that. It must be especially emphasized that Rhone Poulenc had nothing to fear if it delayed the transaction, especially as the main enterprises and the French government as well were located in the non-occupied territory. Nowhere in the files can it be found that Rhone Poulenc was exposed to constraint in order to procure this consent, nor that respective steps to this effect were taken by the German government.

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What, then, prevented the French from taking a wait-and-see attitude? The key to the solution of this question is not hard to find. The documents ~~themselves~~ give clear indications. There were two reasons:

The fact is that Rhone Poulenc had realized that as a "respectable firm" - to use their own expression - they could no longer expose themselves to the odium of exploiting foreign invention, even though under a national law of 100 years standing it was not forbidden. It was the strong moral impulse to protect private property. Rhone Poulenc knew that the invention did not come to Bayer just overnight, but were the result of long, hard and expensive work in the scientific laboratories of the I.G.

The second important reason was this:

M&M's generous offer of collaboration in the pharmaceutical line was a powerful attraction for Rhone Poulenc, and so were the new products which were ^{to be} turned out by Bayer in the future with a corresponding giving up of the French market. Already in the course of the first conference with Jeanne Esculieu, Rhone Poulenc had learnt that M&M was going to make such an offer. Jeanne Esculieu had passed on M&M's original memorandum of 5 October 1940 to the executives of Rhone Poulenc for perusal. The value of this offer of collaboration to Rhone Poulenc was extraordinarily significant. The great production capacity of the Bayer laboratories in regard to the invention of new and in many cases revolutionizing drugs and the prospect to participate in this business in some form or other on the basis of

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a contract agreement could not but be a great attraction to Rhone Poulenc to come to terms with Bayer. Such collaboration was in keeping with their own wish. This is proven by many letters written before the licence agreement was concluded. In a conference held on 19 November 1940, for instance, Rhone Poulenc stated that an agreement had been provided regarding the new products. (MANN Exhibit 207). Already in the conference of 29 November 1940 which resulted in Contract I this question was already under discussion. In that conference Rhone Poulenc even expressed the wish to extend the collaboration to lines other than pharmaceutical products, as for instance plant protection means, plastics, resins and Buna. Rhone Poulenc's letter to MANN of 17 February 1941 (MANN Exhibit 265) bears out this wish. At the same time it conclusively refutes the contention of the Prosecution that a fight had taken place on that 29 November 1940 between I.G. and Rhone Poulenc, the outcome of which had been the licence agreement. How can any sane person think that a fight had taken place in that conference on 29 November 1940, when it was just in that meeting that Rhone Poulenc's own wish, namely, the extension of the collaboration to other spheres, was under discussion? How could Bayer possibly have opposed a wish which they had themselves, namely, the extension of collaboration?

Even before the signing of the first licence agreement, ⁵² on 13 December 1940, MANN drafted the outlines of Contract II concerning the exchange of scientific-

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technical experience and the mutual exchange of the new products, as it was finally formulated in the Leverkusen conference on 25/26 February 1941 simultaneously with the ratification of Contract I.. Already in that meeting the joint utilization of the remaining stock of Bayer products in France and Bayer's definite relinquishment of the French market, as subsequently laid down in (Contract III.) Theoraplix-agreement came up for discussion. This meeting of 25/26 February 1941 between Rhone Poulenc and Bayer with its discussions and arrangements are conclusive proof of the uniformity of the contracts aiming at a profitable economic collaboration.

The basis of these contracts for the time being, had to be the equality of the contracting parties in regard to the protection of patents. It was necessary that Rhone Poulenc should follow the international example and pay licensees for the utilization of the Bayer drugs. (How to make the collaboration work most satisfactorily was then only a matter of methods and forms.)

Bayer could not just make a gift of their concessions, as for instance the unreserved exchange of the new products and the current scientific experience. On the other hand, Rhone Poulenc naturally endeavored to obtain as favorable conditions as possible and to avoid a participation by Bayer. At first MANN thought that a joint

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sales organization covering all pharmaceutical products was the right solution. However, he himself saw the force of Rhone Poulenc's counter-arguments and told them so quite frankly. Subsequently MANN suggested a 25% capital investment against exchange of I.G. shares, based on the offer of the new products and relinquishment of the French market, and later on, when discussing the fate of the remaining Bayer stock in France, he suggested a certain participation in the pharmaceutical production of Rhone Poulenc. While on principle not opposing this suggestion, Rhone Poulenc argued that the time for an interlocking of capital had not yet come. MANN did not insist on it any further. The only outcome was a joint sales organization, Theraplix, Bayer bringing in their remaining stocks left after the conclusion of the license agreements I and II, and Rhone Poulenc nothing, and furthermore, Bayer relinquishing the French market altogether.

Was this joint sales organization been forced on Rhone Poulenc, as the Prosecution tries to make out? Was Bayer to forgo the French market without any compensation? Were any sacrifices imposed on Rhone Poulenc? Was not from Rhone Poulenc's point of view this joint sale of the remaining Bayer stock of 62 different products the lesser evil as compared with the disadvantages to their business which they would have had to fear, if Bayer had remained in the French market, as they were by law entitled to do? All the more so, if Bayer had reverted to their pre-war plans of setting up an own production in France?

Final Plea MARS

The documents prove that Rhone Poulenc showed strong initiative on its own part when this company was established, and frankly acknowledged the value of the remaining stock furnished by Bayer and also the advantage of Bayer's final withdrawal from the French market. This after all was the reason that it had granted to Bayer a 51% share.

In this respect the Prosecution has in particular stressed the participation of Raure Poulenc with ~~de~~ in the Theraplix and described him as a nominee of the I.P. First I must ask, since when the appointment of a nominee in economic life has been pronounced as punishable, if the aim pursued does not constitute a criminal act? If the establishment and maintenance of a sales combine as such is not punishable, then the appointment of a trustee for the purchase and possession of ~~de~~ shares cannot be punishable either.

Apart from this, I have proved on the basis of documents that MARS's attempt to win Raure Poulenc as trustee for ~~de~~ shares on the basis of the 51% shares ^{agreed upon} ~~granted~~ by Rhone Poulenc, was not successful. (Raure Poulenc finally made it clear on 27 April and 5 May 1942 that he is the agent for both partners and that his successor would have to be acceptable to Rhone Poulenc and I.P. Thus the I.P. and Rhone Poulenc practically hold equal shares in the Theraplix.

The contradictions which the Prosecution claims in MARS's interrogations pertaining to

Final Pica Mass

the matter in question, can without doubt be explained in view of the fact that he could not remember in detail the events which had taken place many years ago and had no records at hand. He had pointed out at that time to the Prosecution that the facts could be clarified thoroughly only on the basis of records. These records state also the reasons why the German authorities were left in the belief that Beyer had 51% of the shares in the Thoreplox. The organization of the ESMAF abroad, which participated in the approval of agreements with foreign enterprises, demanded a majority-share of the I.G. and German management. The tendentious statement of the left to the organization abroad was for this reason not corrected later on in order to avoid that the approval be revoked. This was confirmed by the witness Josef SCHMITZ, who administered Beyer's share in the Thoreplox. As far as the payment of 1 million ffra. to M. Paul Beaulieu is concerned, I was able to prove by documentary evidence that this had nothing to do with Paul Beaulieu's partnership. M. Paul Beaulieu received this sum, (which payment had been approved by the foreign currency office) in acknowledgement of his collaboration in the negotiations (MAGN Exhibit No. 273). There is no evidence that this payment to M. Paul Beaulieu was subject to any conditions, as f.i. the exercise of his voting right or his activity for the I.G. Farben.

That was the economic result of the contract and the collaboration for the Rhone Poulenc!

BAYER withdrew his pharmaceutical products completely from the French market, including the colonies, protectorates and mandates.

BAYER relinquished for all time its business in refined chemicals in the French sphere of interest in favor of Rhone Poulenc.

BAYER granted Rhone Poulenc for a period of 50 years the absolute title to the exploitation of all the newly developed BAYER-products in the future.

BAYER undertook to keep Rhone Poulenc currently informed on all *its* scientific technical progress in the field of research in medicaments ~~in the field of research in medicaments~~.

BAYER finally transferred the sale of all its stocks and supplies *not yet included in contract I and II* together with the progress formulas to the Theraplix in which Rhone Poulenc had half an interest and the management of which was in the hands of the son-in-law of the President of Rhone Poulenc.

And what were the equivalents on the part of Rhone Poulenc ?

Rhone Poulenc paid licensees for products the priority of which was recognized to be with BAYER. These licenses were not to be paid by any chance for the past but for the future and for a length of time during which a drug is normally on the market. They were independent of the turn over which Rhone Poulenc derived from those drugs. Is such a payment for license not international usage ? Is the acceptance of licensees for the current exploitation of a discovery and of

a scientific achievement a crime or an immoral action? Especially then, when the fee is proportionate to the profits which accrue from the exploitation? In the trial before the French civil court it is stated expressly that Rhone Poulenc derived "considerable profits" from the contract, and that BAYER's withdrawal from the aspirin business and comprehensive relinquishment of the French market brought great advantages to Rhone Poulenc, which still will continue in the future. The table drawn up by the witness Werner SCHMITZ on the basis of existing data, which could not be contested in the cross-examination by the Prosecution, closes already after 3 years of collaboration and with the payments of licenses figured in with a balance of 3 million francs to the credit of Rhone Poulenc.

And this truly favorable collaboration Rhone Poulenc attained without any investment of capital on the part of the I.G. in its enterprise, without any interference with its sovereignty and its sphere of interest. Where did the I.G. gain the control of the French pharmaceutical industry? Where did it make the production of Rhone Poulenc a component part of the I.G. plants? ~~and~~ ^{where} was the independence of the French industry destroyed, as the Indictment claims in providing a proof ^{for} its charge against MAFU?

I have submitted numerous original letters which confirm the fact, that Rhone Poulenc more than welcomed the collaboration

with RAYE, and that the agreements were observed by both parties in a spirit of sincerity. After these statements by Rhone Poulenc itself WAFB had to be confirmed in his conviction that the contracts with Rhone Poulenc contained nothing illegal or unlawful.

I shall be brief with regard to the legal evaluation. The essential viewpoints have been presented by my colleague Dr. SIMKES. Only the following may be mentioned: The main plants of the Rhone Poulenc together with ~~production and~~ ^{its} management lay in the unoccupied French territory, as the Prosecution ^{itself} states under cypher 112. For that reason the Hague Regulations governing Land Warfare have no application. Moreover: According to Control Council Law No. 10 the action must be directed against specific legal claims and benefits, person, life, or property. This is not the case here. Above all ~~therefore~~ there is no proof of pressure by means of which the personal freedom of persons or the property or the plants of Rhone Poulenc were affected disadvantageously. The last thing to be examined is the claim of the Prosecution that the atmosphere of general intimidation such as is caused by the presence of the armed might of the conqueror or the department of the military government, had been exploited. In this connection I must point to the following: The despair after the Capitulation was visibly less in France than it was in Germany after the Collapse. In France existed a large unoccupied territory. Germany, on the other hand, is completely occupied. In France there were at that time flowering fields and not devastated residential districts and industries. Germany is laid waste for the greater part

France at the time possessed an armistice agreement, Germany, on the other hand, ^{after a complete collapse} not even occupation statutes. Nevertheless, since the complete occupation of the country, agreements have been concluded with foreign business-men, even with the occupation powers. Thus, for example, the great plants of the former I.G. have concluded contracts for dyestuffs in the amounts of several millions of Reichsmark with foreign firms. No one would want to claim that these contracts were concluded involuntarily, concluded under duress because they were drawn up in an occupied country, during a time of the most abject economic depression, by German business-men who, due to the total situation, were most certainly in a greater state of despair regarding the future than the men of Rhone-Poulenc were in at that time. If these contracts were to be regarded as concluded under duress, then contracts could not be concluded at all in the occupied countries. Whether these contracts are to be declared as voluntary or concluded under duress, can be decided with the yard-stick of their economic success. If this result is an economically rational one, then one can assume that these contracts would also have been concluded by the parties concerned if the latter did not live in an occupied country. It has been proven that the economic final result of the contract between I.G. and Rhone-Poulenc was economically advantageous to both parties, for Rhone-Poulenc even of greater advantage. On this basis, too, the contract is also a voluntarily concluded one.

There is no act of robbery or larceny is not present in the Rhone-Poulenc case.

In Count III of the indictment the name MANN was mentioned in connection with medical experiments. In this connection I refer to the statements of the defense counsel for Professor ROERLICH. However, let this be emphasized strongly: The businessman ~~MANN~~ did not have anything to do with all this. Professor ROERLICH himself and the witness Dr. LUECKERS have declared this unequivocally. MANN did not have any connections with Dr. VETTER. VETTER was an employee of the Beyer sales combine, that was all! The scientific department headed by Dr. MERTENS was under MANN's direction; however, only with respect to problems of the scientific advertising. Only after a drug was ready for sale, that is, after all the necessary ~~steps~~ had been finally concluded, only then could the Beyer business executives occupy themselves with the resulting business problems. Thus responsibility for the ~~experiment~~ cannot be imputed to MANN. MANN had nothing to do with the Lemberg-Institute. It was joined to Beyer only in an organizational way and only with regard to purely commercial problems. MANN never learned anything about ~~steps~~ ^{steps}. Nor did he have anything to do with labor problems. This was due to the nature of his position. That he once commented in the Vorstand on a lecture by SAUCKEL does not prove anything. He came to this lecture quite by chance. Since the lecture contained some interesting facts, MANN considered himself duty-bound to briefly inform his colleagues of the Vorstand regarding them.

The gravest charge which the Prosecution brings against ^{all} the defendants in cipher 131 of its indictment is that the I.G. "produced and supplied to the SS poison gases for the extermination of enslaved persons in concentration camps all over Europe." The Prosecution did not succeed in proving that the I.G. manufactured a single poison gas which was supplied to the SS for that purpose. It therefore falls back on a hitherto neglected participation by the I.G. in the so-called "Degesch" (Company for the production of insecticides) through which Zyklon was supplied to concentration camps. In this roundabout way it is intended to hold the I.G. jointly responsible for the horrible crimes which were committed in the Auschwitz EE. In particular, this charge is brought against three defendants, because they were on the ~~managing board~~ ⁺ of the Degesch, namely, NAME, ROSENBERG, and WUNSTED, and among them it is NAME, the chairman of the ~~managing board~~ ⁺ of the Degesch, at whom the heaviest reproach is levelled.

But even this attempt of the Prosecution broke down in the course of the presentation of the evidence. (All that which the Prosecution put forward in order to prove the guilt of the defendants will never be sufficient to support the enormous charges of the Prosecution.)

On what exactly does the Prosecution base its charges? For one thing, the Degesch is an I.G.-controlled enterprise, we are told. However, it has been proved conclusively that it was not the I.G., but the Degussa which was the controlling company within the Degesch. Originally the Degesch was nothing but a subsidiary company of the Degussa, and it maintained closest relations with

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Final Plea MAIN

its parent company even after the accession of the I.G. and the Th. GOLDSCHMIDT A.G. External evidence of this was supplied by the very fact that the entire Degesch staff came from the ranks of the Degussa, that the accounting of the Degesch was handled by the Degussa, and that the Degesch had its premises in the office building of the Degussa. This predominant influence of the Degussa was based on definite arrangements which had been made on the entry into the ~~Degesch~~^{each} of the I.G. The Degussa had reserved the right of managing the business of the Degesch, which the other companies had conceded her unreservedly. The result was that in all these years of I.G. participation not a single business manager of the Degesch came from the I.G., because this function was always entrusted to Degussa executives. This very fact proves that the actual influence of the I.G. within the Degesch was not dominant; so far from being so, it was even considerably smaller than would have corresponded to their business share of 42.5 %. In actual fact, then, just the reverse of the assertions of the Prosecution is the case. It was not the I.G., but the Degussa which dominated the Degesch. This statement is not refuted by the documents which the Prosecution presented in support of their contrary assertion.

In the first place it is stated that the I.G., through the Uerdingen plant, had supplied a stabilizing agent for Zyklon. Between 1939 and 1944, the value of the supplies of this stabilizing agent varied between 900 and 6,400 RM, amounts which represent but a very small fraction of the total business of the Uerdingen plant.

(of the sales of this chemical and all the others there)

Final Plea NAME

With quite as much justification as against the I.G. as supplier of the stabilizing agent, one might bring a charge of complicity in the Zyklon murders against all firms which in some way or other participated in the manufacture of the raw products for Zyklon B, in the supply of wrapping material, etc. Another argument of the Prosecution is that seven out of a total of eight Degesch products originated with the I.G., while only one, namely, Zyklon B came from another partner. This statement is incorrect, to begin with. There were not eight, but only seven Degesch products, and of these seven Degesch products only 3 were manufactured by the I.G., viz. Ventox, Tritox and Cartox; the T-gas came from the Dr. GOLDSCHMIDT A.G., another two products from other companies. The most important product, the Zyklon B, which by far outstripped the other six products so far as sales were concerned, this Zyklon came from the Degussa. Furthermore, the Prosecution bases its contention that too I.G. was predominant within the Degesch on the fact that 5 out of a total of 11 members of the Degesch ~~management~~ came from the Vorstand of the I.G. This argument, too, is untenable on closer examination. In the first place it proves, purely externally, that the I.G. did not possess the majority in the ~~management~~. And it becomes quite unconvincing when one comes to realize the actual influence of the ~~management~~ on the business management of the Degesch. One must soon be struck by the fact that all companies delegated members of their Vorstand to the ~~management~~ of the Degesch although, to the enterprise concerned, the Degesch was only a small insignificant company.

+ Verwaltungsausschuss

But just this fact proves straight away that it was intended to create with the ~~executive committee~~ of the Degesch a corporation, which above all was to carry out other tasks than those confined to the Degesch. This is confirmed by ~~the~~ memorandum of the defendant WISSEL dating from 1943, which shows that the appointment of men in leading positions to the ~~executive committee~~ was carried out in order to make it possible to discuss at the meetings fundamental questions between the combines. That was the essential task of the ~~executive committee~~ (and not a special activity within the Degesch). The ~~executive committee~~ was not based on a legal ruling or ~~a statute~~ ^{the deed} of the Degesch, but on par. 3 of a syndicate-contract (which stated explicitly, that the ~~executive committee~~ did not have the position of a supervisory board). The ~~executive committee~~ is therefore not an organ of the company in the legal sense. Nor was it ever intended as such, but it served the already stated purpose to form the external framework for the coordination of the company interests. The ~~executive committee~~ had therefore no influence on the management on legal grounds. The management of the Degesch was the sole and exclusive organ which decided on business-affairs without being hampered in any way in these tasks by the ~~executive committee~~. This is proved by the fact that the ~~executive committee~~ during the 14 years of its existence

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had never interfered in the business management of the Degesch. Even decisions of the most far reaching implications, as f.i. the ^{introduction} ~~general~~ of chamber-gassing were made by the business management of the Degesch alone, without even informing the members of the ~~executive~~ ^{committee} of this fact. If affairs of such importance and so different from the rule are not reported to the members, it must apply of course to a larger extent to the normal routine of business affairs. The ~~executive committee~~ never bothered about the latter since it had to carry out other tasks already mentioned. (Among the associates of the Degesch, the Degussa which called itself "managing associate", had precedence, which was respected at all times by the other associates.) According to the claim of the Prosecution, MANN as chairman of the ~~executive committee~~ allegedly had direct influence on its business management. This argumentation proves futile if one considers that the ~~executive committee~~ as such had no influence on the business management, and if the ~~executive committee~~ had no influence then the chairman could not exert any influence either, since he had no more rights than the body of which he was a member. Neither was there any reason for MANN to interfere in any way in the business management. For the managing company was the Degussa, with whom it had been agreed that the other associates

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and the ~~executive committee~~ would not encroach upon its rights as "managing associate". The ~~executive committee~~, including MINE, could rely on the Degussa as one of the most distinguished firms in Germany. MINE was business manager of the Degussa for purely formal reasons from 1930 to 1940. However, as I have proved on hand of numerous documentary evidence he was merely "honorary business manager", to whom this position offered neither privileges nor responsibilities. For this reason MINE had not entered the office of the Degussa in Frankfurt since 1930. Not once has he been active as business manager of the Degussa. He had been appointed business manager at the time only for the reason that Herr SCHLOSSER, a member of the Vorstand of the Degussa, was business manager of the Degussa and it was decided that for reasons of normal parity a Vorstand-member of the I.G. should also be appointed as business manager of the Degussa. MINE was the choice because he was director of the sales combine Dyer which supervised the department for insecticides. As formal as his position as business manager of the Degussa was also his position as chairman of the ~~executive committee~~. This fact is proved by the reasons behind his appointment. At that time the Degussa held in another firm, which belonged both to the I.G. and the Degussa, namely the Chemical firm Hoechst, the chairmanship of the ~~executive committee~~, whereas the management was the responsibility of the I.G. Merely

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Final Plea M'WH

in order to create the same conditions in the Degesch, where the position was reversed, M'WH resigned from his purely formal position as business manager in 1940, in order to accept the equally formal position as chairman of the executive committee. Neither in this capacity nor otherwise did M'WH take any part in the business management. The Prosecution has further asserted that M'WH was taking an active part in the affairs of the Degesch. It must be stated that the evidence produced in this respect has miserably failed. In support of this allegation the Prosecution has submitted various documents covering a period of 10 years but referring to pure formalities, like participation in company meetings, meetings of the ~~executive board~~, ^{Normal business transactions}, preliminary discussions on the budget and such like. Not a single document revealed the fact that M'WH had exerted any active influence whatever on the business management. Nor was M'WH under any obligation to take care of the business affairs of the Degesch or to influence through active intervention in the business management of the Degesch the cyclon deliveries in such a manner as to prevent criminal misuse of ~~same~~ ^{them} by the SS. His position as chairman of the executive committee did not include this task. The legal position of this cooperation as well as the usual practice over a period of ten years even prohibited such interference in the business management. (This was all the more out of the question since the relations between the Degesch and the Degussa offered the other associates the guarantee that the business management of the Degesch was entrusted to competent and reliable persons.)

Final Plea KANE

KANE, in his capacity as chairman, had no reason to supervise on his own accord the business affairs of the Degesch. In the case of the Degesch he dealt with a firm that had been managed for decades in a manner above reproach and employed a staff of workers which had been working there for decades, and was subject to strict security measures of the authorities. This offered considerable guarantee that the Degesch could conduct its business in a decent manner (and would refrain from any ^{thing} prohibitive and dishonesty). KANE and the other members of the ~~executive committee~~ ⁺ would have been obliged to act only then, if they had had knowledge or if they had well founded reasons to suspect that the Zyclon furnished by the Degesch was misused by the SS in Auschwitz for criminal purposes. But neither KANE nor any of the other members of the ~~executive committee~~ had any knowledge of this fact. (A direct proof that they had known of this misuse has not been submitted.) The Prosecution now attempts to prove by means of circumstantial evidence that such knowledge existed. It points to the fact that the deliveries of Zyclon to Auschwitz ^{since 1942} had increased tremendously, also that since 1943 non-irritating Zyclone had been supplied to certain SS-offices and finally that these deliveries were not channeled through the army medical depot.

First of all, this chain of circumstantial evidence is not conclusive. ^{For} even if all these individual

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facts had been known, it still is not proved that the fact of the misuse of the Lyclon by the SS in Auschwitz would have been known also. The members of the ~~executive committee~~⁺ did not know at all the facts stated by the Prosecution. Neither their position as members of the ~~executive committee~~⁺ nor their participation in company meetings, nor the yearly business reports submitted to them gave them the opportunity to inform themselves about the details of the business affairs of the Lager. The hearing of evidence, in the course of which the former business manager of the Lager and a number of the members of the ~~executive committee~~⁺ had been heard as witnesses, has proved beyond doubt, that these details of the business affairs which have been cited by the Prosecution as circumstantial evidence of the knowledge of the crimes committed in Auschwitz, concern details of the business management of which none of the defendants had ever been informed.

In an impressive description the former business manager of the Lager, Dr. PETERS, has testified, that despite his knowledge of the business details, the reports of GERSHWIN alone had given him some inkling of the use of the Lyclon against human beings. PETERS kept the informations, which GERSHWIN had given him on condition of strictest secrecy, to himself and did not, as has been proved, divulge them even to his closest associates, much less to the I.G. representatives in the Lager, with whom he did not have

+ Verwaltungsausschuss

Final Plea KAHN

any connection to speak of. I am convinced that the personal impression which Dr. PERES made on this Court, excludes any doubt as to the absolute truthfulness of his testimony.

The attempt of the Prosecution to prove that KAHN, independently of his position as chairman of the ~~executive committee~~ *Executive Committee* had any possibility to get information which could have given him this knowledge, has failed. The Prosecution had all the documents at its disposal which pertain to the relations of the Defendant KAHN with the League. But the Prosecution was unable to exhibit even a single one from which the conclusion could be drawn that KAHN had any knowledge of the details of the Zion Business.

Final Plea KAEH

The only item which the members of the Administration Committee could deduce with respect to the Zyklon-business from the trade-reports which were forwarded to them and from the monthly turnover-reports (which by the way were not submitted to the members of the Administration Committee) was the fact that the sales in general had increased from ~~100~~¹⁸⁰ tons in 1939 to 411 tons in 1943.

Is that a symptom to attract attention? Have we not all of us observed during the war that all products which were connected with the waging of the war even only very remotely attained a multiple of their peace-time sales? Was that not the case in all countries? Has not Zyklon obtained quite a special importance through the war as a means for exterminating lice, as a remedy against the dreadful danger of typhus? Truly, it is absurd to connect the increase of the Zyklon sales with the gasings in Auschwitz. It must be taken into consideration, moreover, that the deliveries to Auschwitz amount to 19 tons in total, and therefore are hardly worth mentioning in the face of the increase of sales which amounted to several hundred tons. In addition it must be taken into consideration that the consumption in Auschwitz which has never come to the knowledge of the accused members of the Administration Committee - which fact has been clearly proven by the hearing of evidence - cannot have served *exclusively* the purpose of gassing of people, but was primarily used for the purpose of disinfecting rooms and de-lousing clothes.

An affidavit of the expert witness ~~Dr. RAUSCHER and Dr.~~
~~has~~ been presented to the Court which proves how negligible is the amount of Zyklon which is sufficient for the killing of warm-blooded living beings.

Final Plea MARE

Even if we suppose that the SS consumed larger quantities of Zyklon in gaschuits for the killing of human beings than would have been necessary, the quantities resulting from this fact would hardly be worth mentioning in comparison to the increase of the Zyklon sales which amounted to more than 200 tons.)

Even if we subject the sales movement to the most careful scrutiny, it will be impossible to conclude from the increase of sales that Zyklon was misused for criminal purposes. The sales increase was bound to appear as an absolutely natural phenomenon, if compared with the development of the sales abroad which is also obvious from the trade reports. In spite of the fact that many customer countries were not available, the development of the Zyklon sales abroad shows an even more pronounced increase than the domestic sales. Being the head of the sales ^{combine} ~~association~~ of LAGER which had control of the department for the extermination of parasites, MARE of course had knowledge of the fact that the sales of the I.G. products for the extermination of parasites had increased enormously on account of the war, an increase which partly surpassed the increase of Zyklon sales. This does not only apply to "Lasecto", but also to "Diametan" which was used in similar fields as Zyklon. None of the business reports states directly that Zyklon was delivered to SS agencies. This can only be concluded indirectly from the fact that concentration camps

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other agencies of the Waffen-SS are mentioned in some of the business reports for having received Degasch-de-lousing chambers. It may be inferred from this fact that the said SS-agencies required Zyklon to some extent. But it is impossible to conclude from these notes in the business reports to what extent the SS-agencies received Zyklon. Not one of the members of the Administration Committee therefore was informed of the amount of the Zyklon deliveries to Auschwitz concentration camp or to other concentration camps. They had only a general knowledge of the development of sales, which knowledge could not arouse suspicion in any way and could not point to criminal deeds as the prosecution wants us to believe. ^{now} The prosecution ~~merely~~ points to the fact that the Zyklon sales slumped in 1941, and increased again in 1942. The prosecution avers that this increase of 1942 was in connection with the killings in Auschwitz. This assertion is absolutely erroneous. The business report for 1941 contains the only possible explanation of this temporary slump: the conclusion of the fighting activities in the West had resulted in a reduction of the requirements there, and the new demands which resulted from the war in the East had not yet taken effect.)

As I have already proved, the big Zyklon deliveries to Auschwitz were quite as unknown to the members of the Administration Committee as the direct deliveries of non-irritant Zyklon to SS-agencies. Not even if somebody had been aware

of these facts, this would not yet permit the conclusion that this man was bound to have thought of the possibility that the Zyklon was to serve criminal purposes. The large deliveries to Auschwitz find their absolutely natural explanation in the fact that many people came to Auschwitz from the strongly lice-infested countries of the East and South-East which increased the danger of typhus infections. The omission of irritants is easily and obviously explained with difficulties in the production, and these difficulties, beginning in May 1944, actually made the general production of non-irritant Zyklon necessary. In this connection it must be emphasized that neither the patent nor the law prohibit the production of Zyklon without irritants. Moreover, non-irritant Zyklon had already been prepared at an earlier time for the purposes of disinfecting foodstuffs and table linens. Trade journals quite openly report about the experience made with non-irritant Zyklon. (In this connection I refer to the statements of the witnesses Dr. RAUSCHER and AERTS.) The fact that limited quantities of non-irritant Zyklon were delivered to agencies of the Waffen-SS was therefore not at all bound to arouse suspicion or to attract attention, especially as the Wehrmacht had also received such deliveries.

It is impossible therefore to deduce any knowledge of the defendants on the basis of the circumstantial evidence which the prosecution has submitted. This ~~may also have been the~~ ^{is} reason why the order for the arrest of the ~~acting~~ ^{deputy} manager and of the "Prokurator" of the Lager was rescinded.

Yet at the same time these people - executives and bookkeepers of the Degesch - had a full insight into the details of the business procedure at the Degesch. The Prosecution itself holds that the knowledge about these above-mentioned occurrences at the Degesch - ~~generally correct~~ ^{impartial} in its opinion - can support any suspicion relating to the misuse of Zyklon only in connection with a knowledge of the Auschwitz happenings derived from general sources. (None of them had any insight into the details of the management; no evidence exists that any of them knew of the details mentioned by the Prosecution, and) ~~no~~ evidence was produced to show that any of them knew of certain rumors concerning the gassing of human beings at Auschwitz. The Prosecution on the whole starts from the thoroughly false presupposition that the knowledge about the Auschwitz happenings was rather wide-spread in Germany. This is absolutely incorrect. It was an extremely narrow circle of persons who received news of this kind either accidentally or from private sources (and only that narrow circle had a certain knowledge of the happenings in the Auschwitz Concentration Camp). It may be that foreign quarters made efforts to inform the German people of these occurrences, but these efforts led to no results. There was in Nazi-controlled Germany a very tight system of information control. It was effectively supplemented by a disarming campaign, which was secretly directed

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and which really succeeded in rendering incredible all rumors in Germany coming from abroad. The experiences from World War I and from the decade preceding World War II filled all people in Germany with the utmost distrust towards all news having the barest appearance of being propaganda news published within the framework of psychological warfare. Just how little the fact of the Laschwitz massacre was known even among the victims directly affected, is best proven by the fact that at a time when the evacuation of the Galician Jews was about to start, none of the Jewish acquaintances of the witness LAUCHNER reckoned with the possibility of being massed in an extermination camp. Nor could the individual actions carried out in connection with the persecution of the Jews in Germany, as far as they were known, convey any knowledge of the Laschwitz occurrences. The Jews were evacuated from Germany, but the only thing known or suspected was that they were going to be sent to the East. And this fact was explained by many in the sense that ghettos or reservations were supposed to be set up for the Jews in the East. This assumption found its explanation in a speech made by HITLER on 5 October 1939, in which he stated explicitly that in connection with the separation of nationalities in the East, which had become possible as a result of the Polish campaign, a solution of the Jewish problem had also become possible. This statement was made by HITLER in the same Reichstag speech in which he talked about large settlements in the East.

The idea of a mass-extermination of thousands or millions of people in a camp specially designated for this purpose, is, in any case, so inconceivable to a person of normal emotions, that the vast majority did not even think of it (and, even when it got wind of such things by way of rumor, rejected them as it simply could not believe them).

Now, the Prosecution claims that, since the I.G. built a plant in Auschwitz, the members of the Vorstand of the I.G. who are indicted were bound to have heard something about the conditions in the Auschwitz concentration camp. In this connection, it must first of all be stated that the 3 Vorstand members concerned here, MAMF, ROTHEISE and RUSTEL never were in Auschwitz, and that they were not connected with Auschwitz in any other way either. And if the Prosecution assumes that the defendants had somehow been informed of the happenings in the Auschwitz concentration camp, this is a completely unsubstantiated supposition. In no instance has this been proved, and all the Vorstand members, questioned on this in the witness stand, declared that they had no knowledge or only very limited knowledge of the happenings in the Auschwitz concentration camp. Not one of them stated that he had reported anything to the members of the administrative committee of the Ghetto. It may be true that in Auschwitz and vicinity all sorts of rumors concerning the happenings in the Ghetto circulated. However, none of these rumors reached the ears of the three defendants. They were living more than 1000 kilometers away from the Auschwitz

Final Plea HANN

million. They were no more able on any account to know anything about the above-mentioned events than the average German. It was especially the fact that the defendants, as Vorstands members of the I.G., belonged to a higher social strata, which kept them out of touch with the broad masses of the people, thereby reducing their chance of accidentally hearing anything about the poison-gas at Auschwitz. At any rate, it was not proved during the trial that the named defendants knew anything about the atrocities at Auschwitz.

Thus it is proved that the I.G. and, in particular, the three defendants had less than nothing to do with these terrible Gypsy murders.

At the beginning of my elucidations on this count, I explained to you why the Prosecution clung so stubbornly to this charge in connection with the Degesch. The Prosecution itself realized that it could not prove that, as stated in the indictment, the I.G. had produced poison gas there which was used for mass murders. Therefore the Prosecution regressed to the I.G.'s participation in the Degesch.

This fact, too, has been completely cleared up with the result that none of the defendants can be held responsible on this point. Thus, I have taken care of the last charge against HANN. For the rest, I refer to the interrogation of HANN, in which, I believe, I have presented all that was necessary, and to my closing brief.

Final Plea M'HEW

Your Honors, if you go over all my statements, you will understand that I am justified in asking for a verdict of not guilty for my client M'HEW. Not only is this verdict just, but also morally justified. You are judging M'HEW as a human being. I have known him for a long time, even before this trial. But during such a trial, one gets to know a person most thoroughly. He lays bare his innermost feelings. I have looked into this man, into all folds of his mind, and I have come to realize that M'HEW is what we call "a decent fellow".

Final Plea MUN

CERTIFICATE OF TRANSLATION

27 May 1948

We hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of Final Plea MUN.

Hanna Marie BIEBER, Civ. No. B-397 989. (pages 12-15; 45-47)

.....

Gertard FISCHER, Civ. No. 17 397. (Cover; 1-4)

.....

Rosl GETREU, Civ. No. 45 672. (pages 22-23; 32-38)

.....

Paul E. GROPP, Civ. No. B-397 975. (pages 9-11; 16-17; 39-44)

.....

Hans NICHTHAUSER, Civ. No. 20 113. (pages 45-47)

.....

Alfred OBERLANDER, Civ. No. 20 192. (pages 5-8; 18-21; 29-31)

.....

Frederic L. PERA, Civ. No. B-397 943. (pages 24-28)

.....

Final Proof To Mark
(Envision)

Case 6
Defense

FINAL PLEA

on behalf of the defendant Dr. Fritz ter MEER

made

before Military Tribunal No. VI

Nuremberg

Case VI

in June 1946

by Dr. Erich HERNDY

Defense Counsel

Young



Final Plea for MEER

Your Honor, Your Honors !

We Germans are justly accused of not having shown sufficient civilian courage during the HITLER regime. I would never permit it that my two clients might reproach me for not having represented their interests in this trial with the necessary frankness. This frankness, however, finds its limit in ^{the} respect which I owe this Tribunal. Not in the outward respect which is shown by the fact that I stand here before you, but in the inner esteem which I have for you, out of my inner conviction and voluntarily, and which is the result of your activity which I was able to watch and to acknowledge during many a month.

First, the defendants are accused of having planned and conducted a war of aggression. What was the second World War fought for ? In the January issue of the "Sueddeutsche Juristische Zeitung" Ministerial Councillor ARNT, of the Prussian Ministry of Justice writes:

"A sober considering of the position must show the Janus head of this war which was not fought for Right alone, but to the same extent for Might. This fight for power takes place for gold or labor currency, for ~~the~~ sources of oil, for I.G. Farben, the Ruhr coal and the British Dominions."

If this is the case, are these men the logical defendants?

If that is the case, is, after the lost war, the I.G. not the actual defendant in this trial, the I.G., whose entire property was confiscated by Control Council Law No. 9, twenty days before the promulgation of Control Council Law No. 10, on which the indictment of this trial has been based ?

Final Plea for KILMER

Did the I.G., which according to the article quoted was one of the objects of this war, have an interest in this war, in a war of aggression? Is it not correct that the I.G., through the results of the first World War, had lost such a great deal, which it had regained in part by considerable efforts, that it would have been a madness of these defendants to start a war? A war, the extension of which was recognized in particular by these men who were gifted with a supra-national foresight? Did these defendants really plan a war, all of them men of a ripe age with great experience in each technical branch, men who knew that a new war would not be decided by spirit and personal courage, but by technical appliances only? Should especially KILMER have been so daring, he, who knew of the attitude of the USA towards KILMER from his own observations, just as he knew of the immeasurable resources of America, he, who after the outbreak of the war, had stated on the occasion of a meeting of the Army Armament Office: "Gentlemen, even if you should succeed in actually carrying out the delivery program demanded by the Army, please try to keep in mind that it will need no effort on the side of the USA to produce ten times the quantity of all materials mentioned here and to make this economic superiority count when the day comes!"

Final Plea for ~~WILL~~

The Prosecution accuses the I.G. that, by developing an industry whose aim it was to produce synthetic products, it has prepared Germany for a war of aggression. In this connection, however, it has a wrong idea of the historical development which was the cause of the coming into existence of this industry. As a result of the first world war, Germany had lost its foreign credits and a considerable part of its foreign markets. Thus, Germany was able to procure the raw materials required for the reconstruction of its industry only with the aid of foreign credits. This caused that Germany during the twenties came to be greatly involved in debt. When, in the course of the crisis in world economy, she was deprived of these credits, Germany's payment balance became passive, and she was no longer able to purchase on the world market a sufficient quantity of the raw materials which ~~she~~ absolutely required for her industry. Nor was it possible to remedy this difficult position in the field of foreign currency by an increase of exports, because nearly all countries closed their borders against the import of foreign goods.

Therefore, Germany had only the choice, either to lower her standard of living, or to try, through the synthesis of indigenous raw materials, to produce herself those products which she could no longer purchase from foreign countries. One can not expect that an industrious and inventive nation lower its standard of living voluntarily. Thus there remained only the way of replacing foreign raw materials by synthetic products, produced from indigenous materials.

Final Piece for MUSE

This war was chosen by Germany. It forced Germany to grant the new industries, at least during the transitional stage, a certain protection against the competition of the cheaper natural products, of which, it is true, there existed a sufficient quantity on the world market, but of which Germany was unable to purchase a sufficient quantity on account of her difficult position in the field of foreign currency. A process thus was repeated which took place during the transitional stages of every modern industrial state from agricultural economy to industrial economy. At that time all these countries supported their industries by protective duties. The development of an industrial state on a natural raw material basis, to an industrial state on a synthetic basis, was a similar transformation. This too could take place only under the protection of the state.

Therefore this was made necessary by economic conditions only, without any connection whatsoever with aggressive intentions. On the contrary, it is a voluntary limitation to the resources of the armament economy. Naturally, the increase of the industrial potential which resulted therefrom is also an increase of the war potential. However, it is not the purpose of this development, but only a result which inevitably was connected with it.

Final Plea for MERS

Your Honors, if you reexamine these arguments impartially, then you will have to acknowledge that they are correct. If that is the case you will have to reach my own conclusion, that industrial leaders who participated in such a development cannot be accused of having intended to start a war.

With these facts the assertion of the prosecution that the I.G., by developing an industry of synthetic products, has become guilty of a crime against peace can no longer be up-held. The prosecution obviously recognized this weakness in its evidence. Therefore, exceeding the argument of synthetic production, it asserted that the I.G. had put its entire production in the service of preparation and waging of an aggressive war. Therefore, the prosecution concerns itself with a great number of other chemicals, such as chlorine, sulphuric acid etc. In all countries of the world, these chemicals are the most common products of the chemical industry. But here, in the frame of the production of the I.G., these everyday products are suddenly supposed to be war material. War material and main war materials, strategic material and similar material, this is what the prosecution sees in all and every products of the I.G.

The witness STARKS had to compile a list of eighteen products which were told him. This list contains mainly entirely normal chemical products.

Final Plan for MEER

In the English version, this list bears the title "Strategic Products", while the German title is "Important Products". This difference in the titles of both languages, which to me does not seem to be accidental, shows by which means the prosecution tries to argue. By doing so one shows only the lack of serious arguments.

The worthlessness of such an argumentation is clearly shown by the facts stated by General MEGAN, who, as expert witness before this Tribunal, stated verbatim on 11 September 1947:

"It is impossible to draw a strict line between wartime and peacetime material".

General MEGAN furthermore justly refers to the fact that one could forge ~~swords from~~ ^{from swords} plough-shares and sickles from spears, that one could not prevent, however, that plough-shares be reforged into swords and the sickles into spears.

In the same manner the synthetic products produced by I.G. can be used as plough shares or as swords. The taking of evidence has proved that the I.G. had planned to use them as plough-shares only. This applies to nitrogen as well as to methanol, gasoline and synthetic rubber. In my statements I shall restrict myself to arguments concerning Buna production. The other fields will be discussed by my colleagues because we agreed on that within the frame of the defense as a whole.

Synthetic rubber belongs to the great number of synthetic products by the development of which modern technology tries to remedy the raw material situation of the world, which deteriorates continuously. Far-sighted pioneers of economy, therefore, considered the synthetization of rubber already in the early stages as a field with a future for private economy activities.

The first research work on synthetic rubber - the so-called Buna - started in Germany in 1906 in one of the predecessor firms of the I.G. in Elberfeld. Already prior to 1914 this work met with considerable results. At the same time foreign countries, e.g. England and Russia, worked on the same problem. After the merger in 1925, the I.G. started the experiments again, because new possibilities of development arose. The work was currently continued and was carried on also during the time of the economic crisis. Therefore the work was under process also in 1933.

In the years to come, two facts became decisive for the extension of the Buna production on a large scale in Germany:

- 1) The question of requirements in connection with the German position in the field of foreign currency,
- a) the favorable results which were achieved by the years of research work.

Immediately after his seizing of power in 1933, HITLER started to combat unemployment with all means at his disposal.

Among other things, one of the means he wanted to employ in this connection was the motorization of Germany according to the example given by America. In 1932, there was 1 car for 4.8 people in the USA, ^{while} there was only 1 per 100 people in Germany. Therefore, the motorization seemed to be a field with a great future. It arose hopes for work and ^{earnings} ~~profits~~ and was well suited to raise the standard of life of the population. No military aims seemed to be present. The example set by America showed that a very far-reaching motorization could be carried out even with the aid of a purely peacetime economy, and that it was of the greatest advantage for domestic economy.

Such a motorization, however, required a huge quantity of rubber. The consumption of raw rubber, including regenerated rubber, in Germany amounted to 85 000 tons in 1935. Until 1938 it increased to 133 000 tons per year. An additional increase of the peacetime requirements was to be expected. It was expected that in case of further peacetime development, 125 - 150 000 tons per year, without regenerated rubber, would be required during the year 1941/42.

Natural rubber does not grow in Germany. Because of the unfavorable situation in the field of foreign currency, which already in 1931 made it necessary to introduce a regulation of foreign exchange, it was impossible to import a sufficient quantity of natural rubber. Therefore, if Germany did not want to desist from the motorization plan, she had to use synthetic rubber. She was able to do that because research work had brought continuously better results. In this connection, the I.G., when expanding its same plants prior to the outbreak of war, remained absolutely in the frame of the sales possibilities calculated for a peacetime economy.

Final Plan for WMA

When the war broke out it had under construction production plants with a planned capacity of 70 000 tons per year. This corresponds to about 50% of the quantity required at that time. The production capacity actually achieved at that time amounted to only 24 000 tons per year.

These figures disprove clearly the assertion of the prosecution to the effect that the production capacity for Buna had exceeded the proper and required capacity for peacetime development.

The defendants cannot be charged with the fact that some governmental authorities expressed desires or plans which urged an additional and faster expansion. As a matter of fact, the I.G. and Dr. von Weizsäcker in particular, opposed these wishes and remained within the frame of such an expansion as they believed to be required by private economy.

The accusation of the prosecution that the production of Buna in peacetime had been quite uneconomical is disproved by the adduction of evidence. The starting of production on a large scale is uneconomical only if the capital invested in this production does not bring any interest or if the new product is so expensive that it cannot be sold or only with the aid of governmental support forming an unbearable burden for general domestic economy.

Final File for KLM

CERTIFICATE OF TRANSLATION

27 May 1968

I, S.A. EACURGE, Civ.No. LTO 20 062, hereby certify that I
am a duly appointed translator for the German and English
languages and that the above is a true and correct translation
of the original document.

S.A. EACURGE
Civ.No. LTO 20 062.

FINAL PLEA FOR MEMOR

None of these prerequisites are present at the production of Buna. Schkopau and Huelo earned dividends, the increase of the price of Buna products in regard to articles made of natural rubber was quite tolerable. It had to be taken into the bargain because the unfavorable foreign exchange situation made the importation of natural rubber impossible.

The rentability of buna production has not been brought about artificially through subventions from the Reich either. In this regard the prosecution referred to the loan granted by the Reich to I.G., the guaranty of prices and markets, and the tax alleviation.

In regard to the loan, the private money market was at that time, as a matter of principle, not open to private industry. This fact was based on government decrees. As a consequence, the taking up of public credits by private enterprise was the obvious way of financing whenever a project was involved, the development of which was in the general economic interest. This loan, the way it was handled, did not represent a special favor for the I.G. either, as it was issued on customary bank terms. If the prosecution especially points out that the Reich had provided the means for the loan by placing a duty on natural rubber, thus protecting the Buna industry at the same time, then this is by no means unusual. Other countries too protect their new industries by duties, in most cases by very high ones. Thus, e.g. the USA, after World War I, set up customs duties on dyes in order to protect their new dyestuff industry.

FINAL PLEA TER MEER

These customs duties were 200 % at first.

The tax alleviation for Buna was not based on a special measure, but was the consequence of a law which had already been passed in July of 1933 in order to boost German business in general, and thus to combat unemployment.

Now the prosecution claims that the I.G. had approached the military authorities on their own initiative in order to win them over for Buna. This is not correct. As a matter of fact, this initiative came from the Army Armament Office, as stated by the witness Strasse in Lbh. ter Meer 93.

When the Army Armament Office, in the course of negotiations, demanded absolute leadership in the rubber question, the I. G. representatives expressly pointed out that Buna was necessary, for peaceful purposes and for reasons of securing foreign currency. As a matter of fact, the Wehrmacht did not succeed with these demands. It even protested at times against the extension of the Buna production. Its requirements up to the war were very small. It must be noted that even during the war the total yearly rubber consumption of Germany never exceeded the yearly peacetime consumption of the last few pre-war years.

That caused the I. G. to consent to the accelerated construction of Buna plants demanded, not by military authorities, but by civilian offices within the frame of the 4 Year Plan, can be clearly seen by a letter written by Dr. ter Meer to his colleague Dr. Kuehne in January 1937, which was submitted to the Court as Exhibit ter Meer 167, and which clearly shows that the Vorstand of the I.G. can only have had in mind a peaceful development for many years, but not a war, much less a war of aggression.

FINAL PLEA FOR GERM

The fact that the site of the Buna plant Huelo, as selected, was only 22 miles from the Dutch border and at a distance of about 300 miles from London also proves very clearly that there was no thought of war.

The I. G. deliberately prepared the sale of the new product on the civilian market by corresponding measures. It exhibited its Buna products at the Automobile Exhibition in Berlin in 1936 and at the World Exhibition in Paris in 1937, it sponsored the holding of scientific lectures in Rome, Paris and Baltimore in 1938 and 1939. Representatives of the press were invited to inspect the gase plant Schkopau.

Altogether incorrect is the claim of the prosecution that the German Wehrmacht had relied entirely on the synthetic rubber of the I. G., and that Germany had no difficulties in regard to her rubber supply after the outbreak of war. As a matter of fact Germany had, at the outbreak of the war, only a two months normal supply for peaceful purposes of natural and synthetic rubber. The plants of the I. G. were in no position whatsoever to cover the requirements. The rubber situation would have been desperate for Germany in the waging of war if she had not throttled down consumption immediately and if she had not succeeded in capturing in the West large stocks of rubber and in importing

considerable quantities from abroad, e.g. ten thousands of tons of natural rubber from French Indo-China. Thus it was not by the merit of the I. G. that the difficulties in the procurement of rubber were overcome.

It is not denied that - like in all branches of industrial production - there existed also for that of the Buna production a government plan for the event of a mobilization, i.e. for the event of war. That is nothing unusual, as shown by the fact that there existed prior to 1933 a "Chemical Defense Committee" in Great-Britain, which contained, besides experts from the three Service Branches, also scientists and representatives of the chemical industry.

Thus, one can draw no conclusions in regard to war intentions of the I. G. from the interest shown by government offices in the Buna production. The defendants had no more thought of war in connection with the Buna production branch than regarding any other branches. They had planned and built these plants for peacetime requirements.

Your Honors, in my arguments regarding the production of Buna I have already touched the relations between the I.G. and the Wehrmacht. The prosecution has, in other connections too, attached a special importance to this question, especially when stating its position in regard to Vermittlungstelle W and the participation of the I.G. in the government's general mobilization plan. I am thus forced to go deeper into this matter.

FINAL PLAINTEXT

The defense does not deny that the Vermittlungsstelle W was established in 1935 by the re-organization of an office already in existence, in order to act as intermediary in the current correspondence between the plants and other offices of the I. G. on the one side, and the government offices, particularly the Wehrmacht ones, on the other side.

It denies, however, with utmost emphasis, that the I.G. has started thereby a special initiative for the preparation of a mobilization, much less of a war of aggression. The evidence has proved nothing of this kind. The purpose of Vermittlungsstelle W was, on the contrary, to effect the necessary internal coordination in view of the scale of the I.G. and the number of its plants, in order to save double labor and to avoid having the authorities play off one plant against the other. It had no independent tasks. Its work was, on the contrary, in many aspects of a purely liaison nature. Several witnesses have thus compared its part with that of a "letter-carrier". For this reason it only had a small staff.

Moreover, Vermittlungsstelle W did not only keep up contact with military offices, but also with the Reich Ministry of Economy. It would thus be entirely naive to regard Vermittlungsstelle W as a general staff of the I.G. for an active support of re-armament or such like.

The accused members of the Vorstand showed hardly any interest for the work of Vermittlungsstelle J. Dr. von Meier has visited this office for the first time after the outbreak of war. Its work was considered to be of a subordinate nature. All this, which has been thoroughly discussed in the collection of evidence, proves beyond any doubt that Vermittlungsstelle W. never had the importance ascribed to it by the prosecution today.

Just as the defendants had no thought of war in mind when they established the Vermittlungsstelle W., they took no leading part in the drafting of the so-called mobilization plans. The prosecution, claims this to be so; this, however, is not correct.

The mobilization plans and the preceding measures, the so-called investigations of production statistics, were not at all traceable to an initiative on the part of the I. G. The first investigation of production statistics was, on the contrary, carried through in 1934 by the Reich Office for Statistics on the basis of an ordinance issued by the Reich Ministry of Economy. It covered all industries, thus also the chemical industry and the I. G. The Reich Office for Statistics made compulsory the filling-out of the questionnaires sent to the individual firms by referring to the decree of 1923 concerning the obligation of giving required information.

This compulsion to deliver their business secrets concerning production, use of raw materials, sales, stocks on hand, etc. was extremely distasteful to the I. G. For this reason it repeatedly tried to restrict this obligation of giving information.

is a matter of principle, however, it had to comply with the ordinances of the state, since a refusal would have been regarded as sabotage, with all the serious consequences resulting therefrom.

The production investigations were replaced from 1937 on for all industries by the so-called ~~production~~ ^{production} plans and mobilization plans. They were drawn up - according to directives from the Reich Ministry of Economy - for the chemical industry by the Reich Plenipotentiary for the Chemical Industry, in agreement with the Reich Ministry of Economy and the Reich War Ministry. The various enterprises had to supply - in a similar manner as in the production investigations - the required ~~materials~~ ^{data}. The I. G. did nothing more in this matter either. It especially showed no initiative of its own in this work which they felt in the main to be an interference with their proper business activity.

After the mobilization plans had been completed, they were sent by the Reich Minister for Economy and/or the Reich Plenipotentiary for the Chemical Industry to the various plants as a so-called mobilization task. They thus were given the ~~character~~ ^{character} of an official order.

The defendant ~~was~~ ^{had} nothing to do personally with the work of the I. G. for the mobilization plans, excepting the work in connection with the mobilization plan for dyestuffs. He was so informed in detail about this plan in the "Top Office" headed by Dr. Struss, only the dyestuff mobilization plan was prepared, after the Reich Plenipotentiary for the Chemical Industry Dr. Ungewitter had asked the I. G. to submit to him a suggestion for the dyestuff mobilization plan of the I. G.

PINAL PLEA FOR KEEF

The abduction of evidence did not furnish any proof that the I. G. had any warlike intentions or had known or recognized anything of this nature while working at the mobilization plan it was compelled to draw up. Together with purely military mobilization plans, purely economic mobilization plans had been drawn up in nearly all countries since the experience of the first World War. This is being done on an even larger scale in non-German countries, and this is not considered to be a violation of International Law. This has no connection whatever with a preparation of a war of aggression. It is necessary for the waging of a defensive war too. Thus the participation in mobilization plans can be considered punishable only then when it serves the criminal aim of a war of aggression or if this is wished by ^{or} at least known to the individuals concerned. These prerequisites, however, are not present in the case of the defendants in this trial. Later on, and in another connection, I shall speak more in detail about these matters on behalf of my client Dr. ter Meer.

The question of secrecy is closely linked with the mobilization plan just mentioned.

The prosecution says that the secrecy measures carried out at the I. G. point still were in the direction of alleged warlike aims of the defendants. This contention of the prosecution cannot be substantiated either.

Every nation keeps secret facts connected with its armament and protects them through anti-espionage laws and regulations against treasonable acts.

FINAL FILE FOR MERR

Besides, every private enterprise endeavors to protect its plant against the divulging of business secrets and experiences. International Law does not forbid it. What there be an exception in the case of the defendants and of the I. G. ? They have done nothing to justify an exception to their disadvantage.

The defendants neither have provoked nor have they promoted the secrecy regulations of the state. There is no evidence for an assumption of the prosecution pointing to the contrary. They cannot be charged with having obeyed government orders concerning secrecy, whose violation would have resulted in extremely severe punishment. They did not know, nor could they know, that such secrecy regulations were intended to cover criminal warlike aims of the government of the state, nor could they conclude from the regulations themselves that such aims existed at all.

Furthermore, the prosecution accused the defendants, in connection with the alleged close collaboration between I.G. and Wehrmacht, that the I. G. initiated anti-air raid precaution measures and had been very active in this special field.

The Tribunal has occasionally rightly observed that it is difficult to ascertain in how far anti-air raid precaution measures could serve the preparation of a war of aggression.

Quite aside from the fact that anti-air raid precautions are always purely defensive measures,

FINAL PLEA FOR MURDER

the defense has proved that in this sphere too the initiative did not start on the side of the I. G. or the defendants, but that the I. G. followed in a very reserved and hesitating manner, until the outbreak of war, the governmental orders. For the rest, we may say that Germany was permitted by the Paris Agreement on Aviation of May 1926 to take civilian anti-air raid protection measures, and that, based on this agreement, the German government had ordered such measures since 1931, thus before 1933. In the case of the alleged "War ~~Plans~~^{Plans}" and "Cartographic Exercises" reportedly mentioned by the prosecution, these exercises were merely anti-air raid exercises, they were only a training measure for purely defensive protection measures against bombing by enemy flyers.

The prosecution not only accuses the defendants of having collaborated in the construction of Germany's war machine, but also of having, furthermore, weakened the war potential of other countries.

CERTIFICATE OF TRANSLATION

27 May 1948

I, Leon Ratsaredorfer, Civ. No. BTO 483, hereby
certify that I am a duly appointed translator for
the German and English languages and that the above
is a true and correct translation of the original
document.

Leon Ratsaredorfer
BTO 483

The Prosecution was of the opinion that the fact that contracts were concluded between the IG and the Standard Oil represented a particularly significant example for the alleged close collaboration of the IG with the Nazi government and of the intentional use of international cartels as a military weapon for the weakening of other countries.

These contracts prove, as a matter of fact, the contrary: Their conclusion and the manner in which they were carried out prove clearly the great efforts made by the IG on behalf of the promotion of international business relations, and its great endeavour to work in fair collaboration with business friends from abroad for their mutual benefit, beyond the borders of Germany.

I do not have to discuss any further the legal and business aspects of the agreement concluded with the Standard Oil, as this has already been done by the defense counsels of the defendant Dr. von Kaierism. With regard to the technical collaboration, I shall only discuss it as far as Dr. ter MEER took part in it. I shall, therefore, restrict myself to the field of rubber synthesis, as other statements, relating to the other fields, will be forthcoming.

from the beginning on
There existed ~~a previous~~ agreement between the Standard Oil and the IG to the effect that the development of Buna, on the basis of raw materials of the mineral oil industry, was to be considered as part of the methods which, according to the ~~same~~ agreement, were to be exploited jointly.

The collaboration of the two contracting partners was, therefore, carried out accordingly.

Extensive experiments were already carried out jointly in Baton Rouge in the beginning of the thirties, and the IG sent some of their best specialists to take part in them. The expenses for these experiments and installations exceeded by far one million Dollars. They were carried by the Jasco, thus to equal halves by the Standard Oil and the IG.

These experiments which aimed at the introduction of the German Buna methods from acetylene (^{four steps process} ~~method of four steps~~) in the USA, had no practical success, in particular because, after decrease of the price of natural rubber, commercial exploitation of this method in the USA did not seem to have any future.

The experiments on tires, which were carried out in 1934 in agreement with the Standard Oil at the General Tire and Rubber Co. in Akron and which were supervised by the buna specialist of the IG, Dr. Stoecklin, had also no results, because of the difficulties in the processing which arose and which at that time could not yet be conquered. Joint negotiations of the Standard, Dupont and the IG in 1935 had no success either.

The IG itself had at that time no method which would have been suited for the conditions in America, and could, therefore, not place it at disposal either.

This was also the reason why until 1936, no further steps in the practical realization of the buna synthesis could be taken in the USA.

Besides, the German government had since 1936 explicitly prohibited to give to foreign countries any information about Buna. This prohibition had, however, no practical importance

until 1938, that is, until the date when it was revoked, upon intervention by Dr. ter MEER, because, -as already stated- no method had been found in these years which would have been suited for the conditions in the USA.

This prohibition did, however, not divert the IG from its aim to develop a rubber synthesis suited for the USA. Upon instruction by Dr. ter MEER, new experiments were carried out in Oppau since 1935, for the purpose of obtaining Butadiene. As basic material for these experiment butylene was chosen, a material which can be found in America in illimited quantities and at a low price, while it is not available in Germany for any large-scale production. After the first positive results of the experiments, the construction of an installation of the Standard Oil in Bayway was considered. While in Oppau the work was still continued and great efforts were made to make progress in the development of the new butadiene method, Dr. ter MEER attempted, already at that time, to interest the American rubber producers in this. All this took place in full agreement with Standard. Mr. Howard and Dr. ter MEER maintained a continuous exchange of views regarding the individual steps to be taken. Howard visited Oppau every year and was informed about the state of the experiments. American specialists visited Germany, in order to study the installations and methods on the spot. The experts of the IG supplied them liberally with information and showed them the pilot plants ~~laboratories~~ where the experiments were made.

Then Mr. Howard visited Germany again in 1938, the experiments in Oppau had progressed to a point where an industrial

exploitation for the USA could be considered. This exploitation was now prohibited by the German government which did not permit the transmitting to foreign countries of information regarding buna. This did not prevent Dr. ter MEER to follow systematically his aim, the large-scale synthesis of buna for the USA. He succeeded in obtaining the rescinding of the prohibition, after detailed negotiations and a very difficult discussion in the Reich Ministry for Economy. He could, however, not obtain a complete freedom of action. He remained under the obligation to inform the Reich Ministry for Economy about the results and the progress of the negotiations with the foreign countries, with regard to buna. Besides, he had to obtain the consent of the Ministry before the conclusion of any definite agreement.

But even with these restrictions, the rescinding of the prohibition was still a major success, which was due only to the personal efforts and the clever manner in which the negotiations were carried on by Dr. ter MEER. This is the most convincing demonstration of ter MEER's endeavors to obtain a collaboration with the American business friends in the sense of the existing agreements. Had it not been so, it would have been easy for him to carry on deliberately the negotiations in the Ministry in such a manner that the former prohibition would remain in force. In that case, Dr. ter MEER could have used this prohibition as a pretext in negotiations with the Standard. The fact that he did not choose this way is a clear proof that the intentions with which he was charged by the prosecution were far from his mind, and that he did not have the slightest intention to cheat his American business friends.

After the government prohibition had been rescinded and negotiations could freely be carried on, Dr. ter MEER went, at

the end of 1938, to America, in order to continue working for his project of an American large-scale production of buna. He took with him the foremost expert on buna from Oppau, so that he might examine on the spot the possibilities for the construction of a plant and collaborate with the Americans in the planning.

Standard invited Dr. von MEER to state in a conference of the executive committee his plans, in the presence of the leading members of the board of the Standard Oil of New Jersey. There he proposed to continue experiments on tires in the USA in order to insure a market for a large-scale production and to secure these potential buyers for the buna. Four large American tire firms should be approached for this purpose in order to obtain their collaboration in these experiments. Dr. von MEER and his German colleagues carried on personally the negotiations with the presidents of the enterprises concerned and obtained their agreement to the experiments, which were then carried out in spring and summer 1939 under the direction of an expert who had been placed at disposal for this purpose by the IG. At the outbreak of war in Europe in summer 1939 the experiments had not yet been concluded. The results obtained up-to-date were, however, satisfactory.

It is correct that at von MEER's visit in November, December 1938, no final agreement was yet reached between the IG and Standard. This was, however, not caused by Dr. von MEER's attitude. The reason was, rather, that the management of Standard did not share von MEER's enthusiasm with regard to the possibilities in the buna development and wanted to wait for the outcome of the tire experiments. After the first new experiments had been successful, the IG and Standard agreed,

however, in summer 1939 to start in autumn 1939 negotiations for the conclusion of a contract. Ter MEER, Ambros and Knierim had already planned a trip to the USA for this purpose, when the outbreak of the war rendered impossible these plans.

These are the bare facts which resulted from the adduction of evidence.

An almost unbelievable force of imagination is indeed necessary in order to be able to deduct from these facts what the prosecution called, on 16 February (?) 1948, the basic foundation of its charges, namely, "that the defendants thereby carried on international negotiations in a manner which resulted in an intentional delay in the development of certain methods essential to war production in other nations and in the simultaneous promotion of similar developments in Germany, and that they did this in cooperation with the Nazi government, in the pursuit of a policy which aimed at rendering the Nazi war machine more powerful than all other countries."

The facts do not at all bear out this conclusion of the prosecution. The course of the negotiations shows that they were carried on by Dr. ter MEER, -I now quote Mr. Howard- "always in a fair and reasonable manner". The development of the buna production does not represent a "method essential to war production", but the creation of an artificial product for use in peacetime, as were produced through the progress of science on various other fields and for the most different purposes. The transition from natural products to artificial products and their synthesis is characteristic for modern industry of all civilized countries.

This transition is the result of the progress of natural science. Dr. von MEER recognized this with far-sight at an early date, with regard to rubber and therefore made sincere effort, in Germany as well as in the United States, to promote the development of the Buna synthesis and its exploitation through private industry. His conduct can, therefore, by no means be considered as a criminal offense.

The IG did not have any intention of weakening the war potential of foreign countries, neither in the field of the buna synthesis nor in any other of its production branches. Evidence has proven that the IG has indeed concluded with American firms a great number of contracts in all fields of chemistry, which were connected with the transmission of information. Dr. von MEER testified that it was the closest collaboration with a certain country, of which he had over heard, and that he did not believe that there exists an American or English enterprise which has concluded a similar amount of contracts with foreign firms of the chemical industry. The IG also concluded, with French and with English chemical concerns, many contracts which were satisfactory to both parties. These facts prove that there existed at the IG no basic attitude aiming at the weakening of the war potential of any countries inimical to Germany.

Final Plea for MEER

Thus I conclude my statements to count I of the indictment and turn my attention to count II. First I must, however, point very emphatically to one circumstance:

Dr. ter MEER has testified in detail in the witness stand on several subjects, also on Francolor and Poland. This was necessary, because these cases were, as to the facts, not yet clarified during his interrogation and because several co-defendants could not be heard, as they did not testify on the stand. The statements of my client served, therefore, mainly to clarify the facts, in the interest of a correct evaluation, but did not serve his personal justification. I must emphasize this particularly, in order to prevent that the wrong conclusions be drawn from Dr. ter MEER's examination, to the effect that he feels guilty regarding these cases. I also must point out that Dr. ter MEER did not give his testimony on the stand from his own knowledge of these incidents at the time of their occurrence -he partly knew nothing of them- but from findings which he had made through documents which were here submitted to him, and through conversations with colleagues which took place only now in Saarberg.

Count II of the indictment will be discussed, within the scope of the collective defense, with regard to France and Poland by my esteemed colleagues, Dr. Siamers. I restrict myself, therefore, to point to several factors concerning my client, Dr. KEER.

Firstly I shall discuss the case of Poland. The Polish dyestuff plants were, after Poland's collapse, placed under government administration, which was carried out by government commissioners. The appointment of commissioners did not represent a confiscation of these factories from their owners, neither was it a cover for taking over for the IG the assets of these plants. The reason for the seizure was the endeavour to maintain these plants in their state. The adduction of evidence has clearly proven that the preservation of the factories served the interest of the indigenous population. Wolfs was, at the entering of the German troops, already greatly damaged, partly looted and abandoned by its owners. Sorata had been abandoned by its directors and by the majority of its employees and work there had stopped. Both factories did not have any cash. Both factories would not have been able to continue their production without intervention by the German offices and would probably have been destroyed through neglect. Evidence has shown, without any doubt, that the IG did not from the beginning plan measures in order to incorporate or annex these factories to its concern. The administration by a commissioner was a matter of the government.

Final Plan for MEER

authorities, which considered the initiative taken by the IG merely as a suggestion. The commissioners, however, carried out the administration of the factories on their own and on their proper responsibility. The witness Schweb has testified that Dr. von MEER confirmed the fact that the officials of the IG considered the commissioners only as government officials, and that they, therefore, refused to give any instructions to them. It is natural that the Commissioners came from the IG, because there was no other firm but the IG Farben which could appoint efficient experts in the field of the dye-stuff chemistry.

The appointment of the Commissioners was carried out by the Reich Ministry for Economy, which was entirely free in its decisions. In case that the appointment of the commissioners was originally suggested by an office of the IG, -it was not for MEER-, it has to be taken into consideration that it was a forced solution which was made necessary by the conditions.

Such administration by a commissioner has been recognized as not punishable in Case IV, with regard to the Rohrbach Huettenwerke. If one wishes, however, to consider the actual length of the government administration by a commissioner, beginning at a certain date, as a confiscation of property in contrast with the regulations of International Law, one has to note the fact that the administration which was originally suggested by the IG lasted only a short time. It was ended by a general confiscation of Polish national and private property. This took place as a result of the taking over of the administration in Poland through civilian authorities, based on German laws and regulations.

These two facts, namely the taking over of the plants by commissioners as suggested by the IG, and the general confiscation based on German laws are not in the least related, neither in their basic principles nor in their consequences. As a consequence of these government laws, the 3 factories could have been confiscated even in the case that no previous administration by a commissioner had existed. The factories were therefore seized twice, once by the appointment of a commissioner as administrator, and subsequently through the general confiscation. The IG had no part at all in the second final confiscation through the new laws. The fact that the former commissioners were retained as trustees after the general confiscation, was based on reasons of expediency, as both were experts and already knew the plants.

The legal confiscation of the three plants which were already managed by government commissioners was a basic change in the situation, a change in which none of the defendants took any part. None of the defendants is therefore to be held responsible for it. The two commissioners, who, after the general confiscation became trustees, were independent delegates of the government who had nothing to do with the IG, and with whom the IG had nothing to do either. This is the reason why Dr. for MEER also explicitly pointed out to the witness Schooner that he was a government commissioner and had to act according to instructions by the government. With regard to the purchase of Loruta I want to point to the following facts:

It was in the interest of the Polish economy to maintain

work at the factory. This was very difficult, because, apart from the fact that the factory was, from a technical viewpoint, badly equipped, it lost, through the division of Poland, a part of its market. The protective duty was also eliminated. It was therefore very difficult to operate the plant, as stated by the witness Schweb. Commissioner Schweb requested therefore repeatedly the assistance of the IG which was granted through the placing of important orders and allocation of considerable ~~sums~~ *advance payments*.

Work at Boruta could, however, only be continued if it was newly organized and provided with a great amount of new equipment, as their installations were technically not up-to-date. The missing items could only be supplied by the IG. The IG was ready to invest the necessary capital and to furnish the required experiences. It could, however, not be expected from the IG, to furnish its experiences to a firm which perhaps would become its competitor later on. Nor could it be expected that the IG would furnish to Polish chemists, foremen and workers experiences which these men might subsequently use to the disadvantage of the IG. A lasting cooperative had, therefore to be established between the IG and the Boruta. The IG wanted, therefore, to lease the factory, a thing which would not have represented a change in the ownership. The factory had gained in value by the new organization. The trustee office rejected this and proposed to the IG a purchase of the Boruta.

As a close co-operation of a longer duration could not be reached by any other means, but since the plant, for the above-mentioned reasons, had to come into a relationship of a longer duration with the IG, if it wanted to keep on existing, there was nothing left to do than to consent to the purchase suggested by the government office, especially since the IG had already advanced considerable sums to the enterprise. It was in this case neither robbery nor extortion.

Half of the Vianica was owned by Frenchman, the other half by the IG. It had been confiscated on account of its partly French ownership. The IG secured the French share in the Vianica by way of the Francolar agreement. In the opinion of the prosecution this represents an additional robbery. The adduction of evidence does in no way justify this opinion. The agreement with the French was made on a voluntary basis. The adducted evidence did not prove any coercion. The sentence of a French Court submitted does not prove anything in this case, since the French Court has by no means clarified matters. The IG was not heard in the French proceedings, could not adduce evidence and not defend itself at all. In my opinion, this sentence cannot be a precedent for the decision of this Tribunal. My client Dr. ter MEER, has negotiated with the French about this agreement in July 1941. He has not exercised any pressure nor made use of it. No crime is present here.

Final Plan for MEER

CERTIFICATE OF TRANSLATION

26 May 1948

I, Helene LAIBMAN, AGO B 398038, hereby certify that
I am a duly appointed translator for the German and
English languages and that the above is a true and
correct translation of the original document.

Helene LAIBMAN
AGO B 398038

Final Plan ter MARR

Now, then, is the participation of the defendant ter MARR in the Polish matter to be assessed? Dr. ter MARR is an ^{engineering consultant} ~~engineer~~ by profession. The activities of I.G. in Poland were based on ^{purely} ~~mainly~~ commercial considerations ~~only~~. In consequence, the engineer did not play any leading or responsible part in the matter. Except for the purchase of the Winnica stock, he did not take part in any negotiations conducted by I.G. with third parties. In the internal deliberations of I.G., he did not play a leading part in the Polish issue. No proof whatsoever has been produced to the effect that Dr. ter MARR co-operated in the initial measures of I.G. aiming at the taking over of the Polish plants. In the ensuing stages, he kept himself within the strictly technical sphere throughout. His signature appears only on two of the letters submitted by the Prosecution. These letters concern the legalization of the change of the name of the Boruta firm. However, this change happened long after the date of the purchase. It did not influence the course of events as such and was but an insignificant technicality.

As far as the other offenses alleged by the Prosecution are concerned - such as the closing down of Wola and the taking over of dyestuffs and certain machines - not even a remote participation of ter MARR exists. The Prosecution has not even offered any evidence to the effect that he was informed of these acts.

Your Honors, you will admit that the problems of International Law involved in this matter are not exactly what you might call elementary. Even a lawyer will not find it easy to decide whether or not purchases ^{from} ~~by~~ government authorities (as a matter of fact, the objects

concerned were purchased ^{from} government authorities in Poland) is admissible in International Law. Ter MERS is a technician. He dealt with technical problems. It was the task of the numerous lawyers of the I.G. to solve legal problems. It may be that the lawyers did have some doubts with regard to the purchase, but it has not been proven that such doubts were mentioned to Dr. Ter MERS. If no legal objections were brought to his notice, he was fully entitled to take it for granted that the transaction was legal. If the lawyers omitted to inform him of their objections, they may be held responsible; it is impossible to hold Dr. Ter MERS responsible in these circumstances. For the same reasons, Dr. Ter MERS's participation in the Polish issue, if any, does not constitute an offense.

Final Plea for KERR

With regard to the Francolor case, I can again refer to the comprehensive and well reasoned explanation given by my learned colleague Dr. SIMMONS. Both with regard to the facts and to the legal aspects, I shall restrict myself to a few short remarks. As much as Dr. van KERR dealt with the Francolor transaction at all, he did so only in his capacity of a technical dye stuffs expert. The handling of the commercial and legal problems involved remained outside of his jurisdiction and professional qualification.

The evidence has shown that Dr. van KERR did not take part in the discussions with German government authorities preceding the Francolor negotiations. It was only at a later stage that Dr. van KERR co-operated as expert for the technical questions involved; this happened only at the time when I.G. made contact with the French partners via the Armistice Commission, and when an initial conference under the direction of the Armistice Commission was planned. At the two meetings which took place in Wiesbaden in November 1940, he did not intervene in the direction of the discussions. Dr. van KERR has stated on the stand that the trenchant language used by Minister HENDERS came as an unpleasant surprise to him and to the other I.G. executives attending. They felt relieved when they were in a position to continue the discussion next day in the absence of government representatives and in a tone better adapted to a business conversation. In the course of the next months, the negotiations were continued and a basic agreement with the French partners was reached in March 1941; during this stage, too, Dr. van KERR's participation was restricted to the technical aspects.

only. The discussions were conducted in an easy and friendly way. Both the convention and the charter of association - the latter was drafted by the lawyers of the French firms - were discussed page by page with the French representatives, and in their final form the desires of both parties were taken into consideration. Neither during these conferences nor otherwise did Dr. KLM ever put any pressure on his partners on the other side. He did not purposely create conditions by which the French partners were forced to approve of, and to accept, the agreement. The admitted fact that the French dye stuff factories to be amalgamated by the Franco-German agreement were in a difficult position, was caused by the general situation brought about by the occupation of France and her being split up into two zones; it was not brought about by I.G. or by the defendant Dr. KLM. This issue has been given particular emphasis by the Prosecution. Do they mean to say that in a country under military occupation no agreements at all may be concluded between indigenous industrial firms and a private industrial firm of the occupying state? In art. 43 of the Hague Rules on Land Warfare, it has been laid down that the occupying power shall take all measures at its disposal in order to restore and to maintain public order and economic life as much as possible. The Franco-German agreement was an efficient means to

Final Plea for KILB

fulfil this task. If I.G. had kept aloof from the French dye stuffs industry completely, then the aforementioned economic difficulties prevailing in France would have forced the plants to close down; dismantling and deportation of the workers to the Reich would have been the necessary results. When Dr. for KILB finally affixed his signature to the agreements approved by all parties concerned, including the French government, he was fully entitled to feel that he had co-operated in a fair and justifiable agreement, even if protracted negotiations had been necessary to bring it to a conclusion. In the case of Dr. for KILB, the charge of having taken part in spoliation and looting is unfounded, all the more so it is due to the Francolor agreement that the French dye stuff plants have survived the war years very well indeed. This applies to their staff as well as to production and profit.

The assertion of the Prosecution that it was the intention of I.G. to loot the French dye stuff industry can easily be refuted by the following facts: as soon as a basic agreement on the Francolor transaction was reached, in other words even before the agreement was signed officially, I.G. assisted the prospective Francolor plants by attaching to them several of their most efficient dye stuff experts and by placing orders with them. This was mainly due to the defendant for KILB. Later on, this assistance

Final Plan for M&ER

was continuously extended and strengthened; I.G. even supplied Francolor with high grade semifinished products. On Dr. ter Meer's initiative, the exchange of experience between Francolor and I.G. was greatly promoted, which applied in particular to new products. In this connection, I refer to the evidence submitted.

The assertion of the Prosecution that special ^{apparatus} ~~instruments~~ were ~~removed~~ ^{and brought to} ~~acquired~~ in France ~~was later removed~~ to Germany by I.G., is wrong. It has not been proved by the Prosecution. As far as Francolor is concerned, the contrary is true: I.G. even put machinery at the disposal of Francolor, i.e. a valuable and modern installation from the I.G. plant Ludwigshafen devised for the production of formaldehyde. The defendant Dr. ter Meer deliberately saw to it that his experts did not make an appearance in the prospective Francolor plants, before a basic agreement on the Francolor transaction was reached. His intention was to avoid even the appearance of industrial espionage.

The prosecution has not succeeded in proving the assertion that I.G. had intended to integrate Francolor in the German armaments program. Both I.G. and the defendant Dr. ter Meer endeavored throughout not to estrange the Francolor from its proper purpose, viz. the production of dye stuffs and semifinished products. In the long run, this proved extremely difficult, as the existing government regulations

rationing and controlling economy increasingly restricted the production of dye stuffs, semifinished products for the textile industry and other peace time products. The government authorities controlling economy forced Francolor to set up a production program for the requirements of the armed forces. However, this program never involved powder, explosives or poison gas, but only innocuous raw products, all of which were sent to Germany for further processing. It has been proved by statistical figures that not more than 18 % of the total output were delivered to Germany at any time. In 1943, direct deliveries to the Wehrmacht amounted to 5% of the total production at the utmost.

Finally, the defendant has been charged with having taken part in the transportation of French workers to the Reich. as far as Francolor is concerned, no proof whatever has been submitted for this charge. In this respect, I refer to the counter-evidence produced by the defense on behalf of the defendant KCMR. In the initial stage, it was a French request that French workers and salaried employees be transferred to the I.G. plants. The idea was to exchange French prisoners of war against young French workers. When later on workers in France were recruited (orfeast) by order of the French government in order to be committed in Germany, only a relatively small number of Francolor workers were affected by this measure. In the case of those Francolor workers who had to be transferred to Germany according to this order, I.G. saw to it, in

Final Plea for MEER

compliance with a desire of M. KROSSLER, that these workers were transferred to plants of the I.G. In these plants, better care was taken of their welfare than elsewhere, and they remained in their previous types of occupation. Thus, the practical implementation of the Francolor agreement, too, does not incriminate Dr. for MEER in the morning of the charges raised by the Prosecution.

May I add some words on behalf of the defendant Dr. for MEER in connection with the acquisition of the dye stuff plant in Wuchthausen and the oxygen plants in Lorraine. My client did not take part in the negotiations resulting in the acquisition of these firms. The discussions were conducted by the commercial and legal experts of I.G. It was at a Vorstand meeting when Dr. for MEER first heard of the acquisition of the oxygen plants. As far as the dye stuff plant Wuchthausen is concerned, the acquisition of this plant was compatible with the plans and intentions of the previous owners. The plant formed part of the Kuhlmann combine. In the course of the co-operation with Francolor, friendly relations with the executives of this combine had been greatly strengthened. An agreement had been reached with these executives to the effect that the question of the Wuchthausen plant was to be settled after the war; by that time, it was felt, a solution adapted to the conditions then prevailing and acceptable for all concerned ^{would} be reached. In consequence, in this case, too, Dr. for MEER cannot be charged with unfairness, not to mention a criminal offense.

Final Plan for MMR

I shall now discuss the charges raised by the prosecution under Count III.

In this connection, the first charge raised against Dr. ter Meer implies that he co-operated in the selection of Auschwitz as the location for a new - the fourth - Buna plant, and that this selection was partly caused by the consideration that Auschwitz concentration camp inmates could be used as workers for the construction of the new plant.

In order to understand the facts concerned, it is necessary to deal briefly with the background story relating to the construction of the Auschwitz plant. The project of the competent supreme Reich authorities to have I.G. construct a Buna plant in the East dates back to an earlier period. At that time, I.G. did not favor this project. In fact, I.G. succeeded in having the plan dropped, although the construction of a plant in Katowice (Silesia) had already started. This fact has been established by the evidence unambiguously. It proves that the initiative of building a plant in the East did not emanate from I.G. and that I.G. even rejected such plans. As a matter of fact, I.G. intended to construct the new Buna plant in the region of Ludwigshafen. This plant was definitely adopted. Before the discussions concerning this third project were completed, I.G. received an order (Auftrag) referring to the fourth Buna plant.

All this follows quite clearly from the documents submitted by the Prosecution. The urgent letter of the Reich Ministry of Economy dated 8 November 1940 (Pres. exh. 1408) reveals that on 2 November 1940 a conference

Final Plan for MAAB

had been held in the ministry, and that it had resulted in an order to the I.G. to start a fourth building project in Silesia. This order emanated with the Reich Ministry of Economy and the Reich Office for Economic Development, both supreme Reich authorities.

I.G. could not but comply with this order and drop its opposition against the construction of a new plant in the East, as this project had adopted definitely. This background story alone shows that it had not been the original intention of I.G. to construct plants in the East and to use building workers from concentration camps for their construction; on the contrary, this project was forced upon I.G. by the state authorities.

The construction of a Buna plant in the East once having definitely been decided upon, the selection of the location in Auschwitz was in no way influenced by the existence of the Auschwitz concentration camp. At the time when Auschwitz was selected as the location, the defendant for MAAB did not even know that there was a concentration camp in Auschwitz, for MAAB and the other executive who selected the location were only directed by the consideration that the economic conditions prevailing at Auschwitz were particularly favorable for this construction project. Coal, lime and salt deposits were in easy reach. The place was situated on a river carrying a sufficient amount of water even in summer time; thus, the river could be used both for the purposes of generating energy and of receiving waste water. Traffic conditions were excellent. The building site was level and offered a solid foundation. All these circumstances made Auschwitz the ideal location for the new plant.

Final Plan for M-222

In spite of all these considerations, the Prosecution asserts that the existence at Auschwitz of a concentration camp and the availability of inmates of this camp as construction workers had been co-instrumental in the selection of this location. Very strong intrinsic reasons render this assumption improbable a priori.

The first objection militating against this assumption is the aforementioned fact that I.G. had in the beginning been disinclined to construct a Buna plant in the East. This fact alone proves that the possibility of using camp inmates for the construction of the new plant was not even considered by I.G. Another consideration militating against this assumption is the fact that - according to experience gained during the war in the U.S. as well as in Germany - man-power problems are at present much less decisive in the selection of the location of a new industry than they had been in the past. Modern organization and modern means of traffic make it possible to ship even very large numbers of workers very quickly to the place where they are wanted. However, the decisive objection against the theory of the prosecution is the fact that at that time nobody in I.G. had a concrete idea of the extent to which concentration camps could be used as a reserve of man-power. Experience in this field was lacking altogether. Thus, it is nothing but preposterous to assume that I.G. had, when choosing the location of the new project, taken a completely unknown and uncertain factor - such as the use of prisoners as workers - into consideration.

Final Plea for KAMM

This is unequivocally confirmed by two memoranda written by the defendant for KAMM on 10 February 1941, in other words by two contemporary authentic documents, submitted as exhibits No. 1414 and 1415 by the Prosecution itself. In these memos, for KAMM enumerated the reasons for the solution of Auschwitz in the most detailed manner, but he did not even hint at the existence of a concentration camp in Auschwitz or at the possibility of using inmates of such camp as construction workers. This proves that for KAMM did not even think of employing prisoners, all the more so one of the two memos contained a lengthy statement on the means by which the man-power problem in Auschwitz could be solved, viz. by the creation of a workers' settlement.

From their part, the Prosecution invokes the fact that as early as at a conference held in Ludwigshafen on 18 January 1941, Director JOSEF BAER of the firm Schloesen - Borsig (Silesia-Sonstagen) stated that a camp for Poles and Jews was under construction in the immediate vicinity of Auschwitz. For KAMM neither attended this conference nor did he receive copy of the record. Moreover, this statement of Director JOSEF BAER rather confirms the thesis of the Defense, as its vague and indefinite form reveals that no exact information on this camp then allegedly under construction was available. If I.O. had planned to use prisoners for the construction of the Auschwitz plant, I.O. would certainly have tried to obtain such information.

Final Plea for KRIE

Similarly the report of Oberingenieur SAUTO of Ludwigshafen, dated 10 February 1941, of which only a draft is on record, does not contain any proof to the effect that I.G. intended to resort to prisoners as construction workers for the new plant. The defendant KRIE did not see the SAUTO report at that time.

In addition, the Prosecution refers to the fact that several defendants had - when interrogated by the Prosecution prior to the trial - admitted that when Auschwitz was chosen as the location of the new plant, the existence of the Auschwitz concentration camp may possibly have been taken into consideration. When examined in the stand, all defendants concerned rectified their statements to the effect that at the time when Auschwitz was chosen as the location of the Silesian Buna plant, the existence of the Auschwitz concentration camp was not even known to them. When evaluating the statements made by the defendants when interrogated by the Prosecution, it must be kept in mind that the incidents concerned had happened years ago; in view of the large number of decisions which had to be made by the defendants, it is quite possible that they got mixed up when trying to remember the details. Clever interrogation tactics, too, may easily bring about such confusion. In addition, the question of the employment of prisoners was actually put on record a few weeks after the date when it had been decided to locate the new plant at Auschwitz. As early as on 18 February 1941, the commitment of prisoners in the construction of the plant was ordered by a decree signed by GOERING. Thus, it is true that the question of prisoners became topical at an early stage of the

planning and preparing work connected with the new building project. This fact makes it easily understandable, that the defendants, when interrogated, imagined that the employment of prisoners had been considered right from the start. Actually, this had not been the case.

As far as the defendant ter MEER is concerned, it is significant in this connection that this defendant stated, when interrogated by the Prosecution, that when the location in Auschwitz was chosen, the existence of the Auschwitz concentration camp was a mere coincidence. Within a different context, Dr. ter MEER then declared that the fact that the Auschwitz concentration camp could supply man-power may have been an additional consideration contributing to the selection of Auschwitz; in making this statement, he intended, however, only to point out that this fact may possibly have been known to one of the numerous departments which were concerned with this measure, and that it may have influenced the decision of that department. The defendant ter MEER himself had no knowledge of this fact; this is unequivocally shown by his two memos dated 10 February 1941 in which the existence of the Auschwitz concentration camp is not even mentioned.

To sum up, ter MEER was not aware of the existence of the concentration camp in Auschwitz, when he approved of the decision that the new Buna plant ordered by the Supreme Reich authorities was to be located in Auschwitz. He can, therefore, not be held responsible for the employment of prisoners ordered by GOERING. After the

Final Plan for MEER

receipt of the GOERING order, dated 19 February 1941, I.G. was forced to accept the commitment of prisoners in the construction as an accomplished fact and to abide with it. If I.G. had refused to employ concentration camp inmates, this would in the conditions then prevailing have been considered sabotage and severely punished. Thus, the Foreland members of the I.G. were in a state of duress. No choice was left to them, all the more as the Auschwitz plant was considered of the utmost importance for the war effort. A position of this kind has in the Flick judgment expressly been acknowledged as a state of duress, a state of necessity, by the American Military Tribunal.

The Defendant for MEER is, therefore, not responsible for the consequences possibly resulting from the fact that I.G. was ordered to employ prisoners in its Auschwitz plant. For MEER only took part in the selection of the location. Otherwise, he had no influence on the management of the plant and in particular on the social welfare of the workers employed in the plant. Neither in his capacity of chairman of the Technical Committee nor in his capacity of chief of Sparte II was for MEER concerned with the construction of the plant. This was the exclusive task of the local plant management.

In his capacity of chairman of the Technical Committee, for MEER admittedly took part in the granting of the so-called construction credits (Aufbau Kredite) which obviously included the expenditure required for the accommodation of the workers and for their social welfare. This did, however, not imply a personal responsibility of for MEER for the welfare of the workers in the plant. This task

Final Plan for KLII

did in no way come under the functions of the Technical Committee; the Technical Committee only provided the funds necessary for the construction of the new plant.

It is true that Dr. SCHAUS submitted to the Technical Committee statistics concerning the employees of the more sizable I.G. plants, but this was done only in order to convince the Technical Committee of the necessity to grant funds for the new installations under construction. This procedure never implied the extension of the jurisdiction of the Technical Committee; this jurisdiction did never include the social welfare of the workers employed in the various plants.

In spite of this, I do not hesitate to admit that in his capacity of a Vorsteher member of I.G., the defendant for KLII would have had the duty of taking action, if he had heard that the concentration camp inmates employed in the camp were badly treated, and if he had been able to remove the grievances. Here, too, the axiom applies: ultra posse non obligatur, in other words: if no possibility at all is existing to prevent the results of an act, then there is no possibility to adjudicate criminal responsibility for such results.

However, the defendant for KLII never heard that the prisoners employed in the Auschwitz construction were badly treated. Each of the two visits in Auschwitz which he made in 1941 and 1942 were restricted to a few hours, and he did not form any impressions which would have made

it incumbent on him to intervene. Auschwitz gave him the impression of a large size building project in which prisoners and free workers co-operated jointly.

As far as the killings and cremations in the Auschwitz concentration camp are concerned, not even rumors reached for MEER before 1943. When interrogated by the Prosecution, the witness SERUSS stated that he had probably mentioned such rumors to for MEER. However, when the witness was cross-examined on 5 May 1948, he rectified his statement spontaneously and declared that he now remembered distinctly that he had not discussed this matter with for MEER.

Neither the visit in the Kamenitz camp nor the visit in the concentration camp Auschwitz proper gave for MEER any indications to the effect that the prisoners were treated in an inhuman way. The very fact that for MEER, a man of intrinsic decency, made these visits, is as such a strong indication for the fact that for MEER did not even have an inkling of concentration camp atrocities. On these visits, for MEER was deceived by the SS in the same way as very many other German and foreign visitors. If the SS even managed to deceive visiting commissions of the International Red Cross, then it is obvious that the SS easily managed to mislead by camouflage a man such as for MEER, who was lacking the experience of the members of international investigating bodies.

The defendant for MEER can, therefore, in no way be held responsible either for the commitment of prisoners as such nor for the treatment meted out to them.

Final Plot for MAGE

CERTIFICATE OF TRANSLATION

26 May 1948

I, Ernst SCHAEFER, Civ.No. LEO 20 163, hereby certify that I
am a duly appointed translator for the German and English
languages and that the above is a true and correct translation
of the original document.

Ernst SCHAEFER
Civ.No. LEO 20 163.

So much as to the most important charges preferred against my client by the prosecution. Unfortunately I am unable to find out exactly, what precisely he is charged with, because the prosecution from the very beginning has refused to explain exactly which charge has been preferred against the individual defendants. Why? Because it is unable to do that. The prosecution just can not tell exactly and prove, with what it charges the individual defendant. And since it can not do this it uses a legal dodge, a legal trick: it puts them together and throws them so to speak into a 'big pot' which it labels: conspiracy. I am sure that the prosecution became convinced at least during the trial, that there is no conspiracy in this case. But it sustained this allegation because otherwise it would have had the 'biggest trouble with evidence'.

I believe that after evidence was produced and my client has expressed their views I do not need to discuss the charge of conspiracy any more. It has to be proved in the case of each defendant, therefore also in the case of my client for JEBB, in a manner excluding any reasonable doubt what individual crime he had committed. Now concerning this issue you have to consider decisively what for JEBB was, particularly what position he held at the I.G. and what responsibility resulted from this position. He was a member of the Vorstand. I do not go into the significance of this position since

anything necessary about it was already told to the court. Neither
do I go into the matters of the Central Committee.

The most important position held by Dr. van VEER at the I.C. was probably the one of a chairman of the Technical Committee, the Tec, the highest technical corporate body of the I.C. Before and during the trial van VEER has thoroughly explained Tec, its creation and importance. If one wants to take this position one has to keep in mind the following: According to Tec's business rules its tasks were the following: "all technical and scientific problems of the I.C. as well as other fields in so far as they are connected with these problems." This was dealt with at Tec meetings. They started with an information of the leading technicians of the I.C. always by technical and scientific lectures. Then the so called credits were dealt with, which had been thoroughly covered during previous commission meetings. Problems of contracts were discussed only if they were of a technical nature. In earlier years ~~other~~ other problems were discussed in the Tec. After its reorganization in 1948 by Dr. van VEER problems of management were on principle not dealt with any more, since this was the task of the Betriebsführer and the Federal Office of the individual plants. It is important to keep the following in mind: Tec was not a corporate body which could make decisions or execute them. It was not a decision but an agency which expressed opinions. It examined the situation, suggestions, documents etc. issued on matters about them and then made its suggestions to the Board which regularly held its meetings.

on the next day. The Vorstand decided then what was to be done. This, not the Tee, was the deciding corporate body. The Tee did not have to supervise the execution of new installations approved by the Vorstand on Tee's suggestion. It did not possess such a right and such a duty. As chairman of the Tee Dr. tar BUEB was not a superior of other members particularly not of other co-members of the Vorstand. He was only a first inter-vice. At the I.G. members of the Vorstand were completely equal among themselves. No one or not superior to another, nor subordinate to another. Neither was the chairman of the Tee a superior of the Werkfuehrer and Betriebsfuehrer. He had no right to issue directives to them, neither was it his duty to supervise them. This was a result of the Tee's nature; it was ~~not~~ a corporate body which possessed members but did not make decisions. It is necessary to establish clearly the records in order to obtain exactly the position of Dr. tar BUEB, to understand what he did, and what he had to do.

Further, what actually did the Tee, particularly Dr. tar BUEB, do with regard to the charges which have been brought against the I.G. To give you a picture of Tee's activities I now submitted the records of 12 subsequent Tee meetings held between 10 October 1936 and 7 August 1939. This period begins with the proclamation of the Four Year Plan in October 1936 and ends with the outbreak of the war in September 1939. A survey of these records shows that the Tee was engaged in its normal tasks during this time.

Final File for IBER

In these records you will not find even one reference to mobilization plans, "Vermittlungsstelle", measures for air raid protection, plan books and the like. Lectures with which every Tea meeting began concerned all fields of work of the I.G. They also characterize the lively collaboration with foreign countries. Dr. IBER reported during his examination in court about the investment policy of the I.G. The new installations constructed at the I.G. from 1925 to 1939 are such that the expenses incurred for them are in no way exaggerated. This is particularly shown by a comparison of of expenses after 1933 with expenses during the years 1925 - 1929. In exhibit 44 I have reproduced a number of excerpts from the records from the period 1936/39 which show irrefutably that it was tried by every means to limit expenses for new installations, and to reduce them to the extent of normal ^{dispositions} ~~state~~ ~~dispositions~~. These attempts to limit expenses for new installations emerged already at the Tea meeting on 23 June 1937. At this meeting, on motion of Dr. IBER, limits were set for expenses for the new installations of the three Siersten and at the Tea meeting on 17 November 1937 it was decided furthermore that "the technical installations of the I.G. should not be expanded beyond the present state." In 1938 from 7 April until 15 September 1938, i.e. for 5 entire months, no Tea meetings were held in order to prevent thus a possibility to grant permission for new installations.

Final Plan for MEER

Owing to this energetic action of Dr. MEER expenses for 1939 could be considerably decreased beneath those of the previous year. Thus the 17 records of the Ras covering the period from the proclamation of the Four Year Plan to the outbreak of the war show clearly the continuous endeavors of Dr. MEER to limit expenses for new installations. From the proclamation of the Four Year Plan Dr. MEER in his capacity of chairman of the Ras succeeded in preventing the I.G. to become an instrument, substitute of an own will, of the economic policy of the Third Reich. This is the true picture of Dr. MEER as chairman of the Ras, not the distorted one as drawn by the prosecution which wants to represent him as a henchman of the economic policy of the Nazis.

Furthermore, Dr. MEER was the chief of Sparte II. The Sparte chiefs were appointed first as saving commissioners so to speak, on the occasion of the economic depression 1929. After this depression was overcome the division into Sparten was upheld at the I.G. The Spartenleiter were given the task to keep the expenses and proceeds in balance within the individual Sparten, and to guarantee the professional scope of the Sparten. The aim was to prevent that several plants, each independently or even acting against each other, worked on the same problem. The Sparte of Dr. MEER comprised mainly dye, besides that also other products, e.g., pharmaceuticals and

chemicals. There were so many of them that any man could not survey the manifold work of this Sparte. Advanced special knowledge is necessary for this purpose, and brain can not possess all of it. Because of the scope of his Sparte for IER, of course, did not and could not learn everything which happened there. Any information could not be given to him since it was secret, etc. the investigation of Wagon in Elberfeld and the production of Porosit in Karlsruhe. For IER as Spartenfuhrer was not a superior of other members of the Vorstand, working in his Sparte, who were chiefs of the big plants. He was only a prince interpreter. So fully like he was the same as ^{the chairman of the Tea} ~~member of the Vorstand~~ and like the other Spartenleiter. The other members of the Vorstand were not subordinate to him. They could not be. They were his colleagues, even then men of an advanced age and of international reputation. Thus there was no possibility for him as a Spartenleiter to interfere with the course of the Betriebsfuhrer. He had no right to issue directives to other members of the Sparte, neither was it his duty to supervise them. Because the technical management of the individual plants was independent. One should not forget that the individual plants were based on a long-standing tradition which increased their independence. This, too, shows that for IER could not learn everything in the technical field and that he could not interfere with the technical production.

Final Fine for MEER

I consciously do not discuss the other positions held by ter MEER in the I.G., e.g. as member of various committees. I explained them during the examination of ter MEER. I also do not occupy myself with his positions outside of the I.G. May I only refer to the conspicuous fact that, as witness SWEDTER emphasized it, ter MEER had held very few official and semi-official positions. From this one can not draw the conclusion that he was not connected with the Food system connected with economic organization in the Third Reich. I must refer in short to one position only, since the prosecution has indicated it particularly, namely the one in the Economic Group Chemistry. ter MEER had been member of the Economic Group Chemical Industry and ~~was~~ ^{was} the ~~last~~ ^{last} ~~year~~ ^{year} deputy chairman of the President. This President convened for the first time in the middle of March 1943 and dealt only with problems of organization during this year. According to the testimony of the president of the Economic Group, SWEDTER, ter MEER hardly ever cooperated in these activities. Owing to his departure for Italy on 15 December 1943 this activity was discontinued completely.

Up from this point, i.e. from the middle of August of 1943, for JEB did not work for the I.G. any more. His connection, loose at the beginning, became very slight soon owing to the local separation and then was ended completely so that he was not informed any more about the current business of the I.G.

For the 4. days time longshoreman after 18. September 1943 in the 2g
can now be held responsible.

There is one point which has to be stressed very clearly. Defendant Krauch was appointed to the Office for German Raw Materials and Substitutes in 1936, and there became chief of the Chemistry section. Neither the Vorstand nor the Central Committee had any knowledge of his appointment. There never was a resolution adopted about it. From 1936 up Krauch did not participate in any meeting of the Vorstand, Central Committee or Tes. On the request of ter MEER he resigned from his position as chief of a Sparte. A correct separation between the individual Krauch, as a still nominal member of the Vorstand of the I.G., and the office Krauch, as General Plenipotentiary Chemistry, was always observed. Both the Vorstand of the IG and Professor Krauch himself attached the greatest importance to that. This proves that all, that concerned Krauch as General Plenipotentiary Chemistry, cannot be put on the account of the I.G. and its individual Vorstand members.

Your Honors;

If you have to pass a judgment then do not judge the member of the I.G.Vorstand but the man Frit for MEER. Now then, who is for MEER? The evidence showed a clear picture of him which probably has been impressed upon your mind. He was the first of the defendants who left the dock and was permitted to ask the expert witness General Morgan material questions. Even as laymen you have probably realized that for MEER is a technician with a considerable knowledge. He was brought up the hard way. His father had him work in his own factory. He did this not to spoil him there, on the contrary, he kept him well up to the mark. He had to do the simplest, dirtiest jobs, he had to crawl like the other workers into bottles; but like he shared the work he likewise shared his buttered bread with the workers and partook in their troubles. When he came into the Vorstand he took care of them and obtained above all that the factory Gerdingen was not shut down even during the worst times so that the workers continued to work there. He worked unrelentingly for the factory. He demanded much from everybody, but from himself most. He was strictly objective and especially just. His sense of justice went so far as to refuse a raise in salary even to friends if he considered it unjustified.

A sincere, open man who devoted all his working capacity to the welfare of the factory. Always objective, never personal, a gentleman, incorruptible,

Final File for KLER

always correct, unpretentious, absolutely reliable. His sincere, straight way of conducting negotiations was appreciated in his secret policy and was governed by principles of particular fairness.

Tor KLER has a stubborn character which always kept him free from influence of mass psychosis. His development was influenced by his long stay abroad during his youth and by his long lasting activities in USA during his ripe age. Tor KLER was remote from any Kingism and byzantinism.

Tor KLER has always fulfilled his duties toward the church so that the presbytery of his home community interceded for him without reservation.

One feature of his character is conspicuous; his great sense of responsibility which you probably have observed during his examination.

Shortly after the World War Tor KLER became member of the communal representation of his home town as a democrat. This was his only political activity, if any. Otherwise he kept aloof from politics. He did not, like many, join the Party immediately in 1933; neither did he join an affiliated organization, e.g. as motorist the AS Motor Corps. He kept aloof. In 1937 when the General requested him to join the Party he refused. Not until he was told that in such a case he would not get a passport for travels abroad, i.e. he would be deprived of the possibility to make business trips, and to visit

Final Plan for MESS

his daughter and grandchildren abroad, he decided to yield to the pressure and become member of the party, abstained, however, from any political activity. He criticized openly the activities of the party bosses. He branded in public the degeneration and the moral decay of the state administration; he particularly despised the racial theory; after the pogrom in 1938 he called it a crime which no government could commit without punishment; he said that in front of many people in the chains of the I.G. without any regard to the attending staff.

He continued his relations with Jews after 1935 in a marked more friendly way; he helped many of them especially by providing jobs for them abroad. No picture of HITLER decorated his office, the swastika flag was never hoisted on his house in Kronberg; this, too was a sign of a special courage since the house is a landmark. Today it is a clubhouse for American gun rals. He kept aloof from communal receptions. He openly showed and expressed his aversion. Whenever donations were required he paid the minimum. He kept to this minimum even when this had resulted in a violent clash. He was not requested to appear at important economic political meetings because the Party did not consider him reliable. The Party never trusted him and certain other members of the Vorstand, so that it even intended to have a convinced party member appointed to the Vorstand of the I.G. It was mainly due to her MESS that this was frustrated. He himself was supposed to be removed from the Vorstand later on.

Final Plot ter KERR

On the occasion of an expansion of the Vorstand of a railroad car factory, of which he was an Aufsichtsrat member he had appointed three non-party-members as members of the Vorstand and rejected a party member.

This is the picture of Fritz ter KERR. These are not mere figures of speech I am using. Every sentence, every word is backed by affidavit or testimony of a witness under oath. Do you believe, Your Honors, that such a man, and he is a man, that he made a covenant with the Nazis? Can one believe that in summer 1939 or at any other time he expected a war? He went to Zurich in July/ August 1939. He had not had brought his almost 80 years old mother from the Lower Rhine to Bavaria, to get her out of the zone of danger. He did not call back in time from abroad his only child left out of three. He did not suggest a sudden recall of chemists and fitters who assembled a dye factory in England in August 1939. He intended to go to the USA in fall 1939 and had already booked the passage on a boat.

Can one assume that ter KERR wished a war? He, the technician, who knew that in a war the technical ^{capacity} ~~and~~ will decide, he who knew the economic power of the United States from own experience, he who had the courage, as I told you before, to throw this in the faces of officers at the Army Ordnance

like a dash of cold water.

On 15 September 1943 ter MEER went to Italy. He went there with a feeling of relief. He had to endure too many conflicts in Germany, particularly because of the continuous interference of state - and Party agencies with the economy, which he wanted to be a free one. He was more free in Italy than in Germany. There he could order out as he wanted to which he did. He prevented the ^{removal} ~~deportation~~ of machines and raw materials from Italy. He prevented the intended shutting down of factories. He was in open conflict with German Wehrmacht agencies when they wanted to destroy large factories like e.g. power stations. Ter MEER opposed that and thus protected the whole Italian industry. He had procured fertilizer for the agriculture in order to secure the supply of the civilian population. The Security Police in Milan called him "a lax civilian" and watched him. He prevented deportations of labor to Germany by declaring individual factories protected plants and in other cases warned the workers in time so that they could escape into the mountains. If the Northern Italian industry avoided a complete destruction then this is the exclusive merit of ter MEER. These, too, are facts proved explicitly. Typical is the testimony of witness WERB: "..... when he took over his position in Italy he had only a small suitcase and traveled just as lightly when he left." Can you expect from such a man

that he looted in other countries? Can one believe he had
made himself guilty of enslavement of other men? No,
Your Honors, if you judge justly this man - and I have
this firm belief in you - then you can pronounce but one
verdict

NOT GUILTY!

CERTIFICATE OF TRANSLATION

28 May 1946

I, Stanislaw S. FELDMAN, Civ.No. LTC 1043, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Stanislaw S. FELDMAN
Civ.No. LTC 1043.

Furness Oster (Enderby)

Case 6
Defense

Case VI

Trial against Krensch and others

PLAINT

for

Dr. Heinrich OSTER

by
Helmut Hesse
Attorney at Law

Nurnberg, June 1948

Dr. Hesse



FINAL PLEA OSTER

Your Honor:

In the Trial Brief which I have submitted to the Tribunal on behalf of my client Dr. Heinrich O s t e r I have undertaken an appraisal of the evidence of the Prosecution and my own evidence, and moreover have indicated the problems which in my opinion are of importance for finding the judgment. Essentially it is a question of the responsibility which is to be ascribed to my client and his guilt in the events advanced by the Prosecution.

The points which I have to analyze more closely are the following:

- 1.) Did Dr. Oster by his conduct become a causal agent in the crime committed by Hitler of beginning a war of aggression?

The Prosecution not only attempts to hold the individual defendants responsible for what they did themselves but also imposes on them the responsibility for the entire business activity of the I.G., independently of the fact of who brought about the individual measures in detail through his own action. In contradiction to this it must be stated that such a summary way of looking at things is contrary to all recognized laws of causality. One must adhere to the view that this responsibility can only be confirmed if the agent has fulfilled the necessary requirements for a specific result by his own action. If, in my comprehensive appraisal I consider the evidence which the Prosecution

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has advanced regarding active conduct on the part of my client, I necessarily come to the conclusion that his conduct can in no way be described as causal, and more specifically causal with reference to the result which occurred, the war of aggression which was begun in 1939. In the tremendous mass of documents I have found only a few exhibits which show any act by my client, in which connection I do not mean to say that these actions are causal with reference to the war of aggression. If one makes the attempt and tries to explain away the conduct of my client, then no further argument is required to come to the conclusion that the political developments in Germany would not have proceeded differently in any respect and that any inactivity on the part of my client would not have had the possible result that the war would not have begun. In this context I can compare the contribution which my client made towards starting the war with the activity of any farmer who has increased agricultural production by utilizing the nitrogen sold by my client's organization, the Nitrogen Syndicate, and thereby also contributed towards making it possible to wage war. It is not necessary for me to linger over this point any longer, as it is obviously not the theory of the Prosecution that it can prove a guilty act by my client in this way.

The theory of the Prosecution goes even farther, rather is it to the effect that every single defendant is not only

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responsible for what he did himself but that responsibility is also imposed on him for that which happened within the I.G. in the last decade before the beginning of the war without his own active participation. In order to extend the requirements of causality so far and to regard that which happened as of significance in criminal law for all defendants, it is necessary to prove that the individual defendant, who did not participate in these things by his own positive action, was under a responsibility of positive action. For the sake of the clarity of the argument it might be pointed out very unequivocally that it would then be a question of a so-called crime of omission in a case where according to recognized rules there existed the possibility and the obligation of preventing the criminal result. In these cases, therefore, it would not be a question of my client having rendered himself liable to punishment by a positive action but rather by an omission. That means that he was obliged to perform some positive act. According to recognized principles of criminal law, causality through omission can only be confirmed if there existed an obligation to do something. One might ask wherein this obligation can be seen. The Prosecution considers this obligation as existing by virtue of the fact that my client was a member of the Vorstand of the I.G.. But in what respect can such an obligation on the part of a Vorstand member be seen? The Prosecution desires to extend the idea of responsibility further

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in such a way that all defendants are responsible for everything which happened within the I.G. regardless of whether it occurred in their work-^{ing sphere} or in that of their colleagues. This would mean, for example, that one would require my client to interfere in the working sphere of his colleagues and, if occasion should warrant, to hinder their actions in case a punishable action should be involved. The Prosecution wants to impose this obligation on the individual defendants because they were members of the Vorstand of the I.G. It requires, therefore, a mutual supervision. One might ask whether the fact of being a member of the Vorstand of an industrial enterprise obligates one to do this. For the purpose of examining this question I might point out beforehand that the connection which Vorstand members of an industrial enterprise have with each other is a connection of civil law. This connection is derived from the fact that various men have come together for a common purpose. This purpose is to manage this enterprise in common. The responsibility which these men have is primarily a responsibility towards those persons whose interests they represent. These are the stockholders of the company with whose money they are working. With respect to them the responsibility is a common one, since it rests on the same legal basis, namely, on the commission which has been given them of managing the business of the enterprise. That the responsibility is exclusively one in civil law is shown by the nature of the affair. That in the case of a large enterprise it is not an exclusive and absolute one is shown by the fact that it would go beyond the powers of the individual to acquire knowledge of everything which is happening in the company, to influence it and therefore to ^{be} responsible for it. I do not intend to make any further comments on this point, since I am in a position to refer to the expert opinion which has been prepared by the

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Page 4 of original cont'd.

attorney at law, Dr. Walter Schmidt, the co-author of one of the best known commentaries on the Commercial Code. This expert opinion has been submitted to the Tribunal (V. Extrinsic Document 39, Defense Exhibit 280). I shall quote the following sentences from it:

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"In so far as a Vorstand member carried out business measures in his sphere of tasks the other Vorstand members were free of responsibility."

"With respect to their colleagues in the other branches of the business they were only subject to the general duty of supervision, that is, so long as their colleagues could be considered trustworthy they were freed from any special duty of investigation and examination".

The decisive question here is whether these persons also have a joint criminal responsibility, merely by virtue of the fact that together they constitute the Vorstand of the company. This might be conceivable in specially situated cases if the entire Vorstand should lend itself by a common plan to an action which on the one hand is of importance in criminal law, on the other hand stands in conjunction with their activity as Vorstand members because it injures the interests of the stockholders with whose money they are working. The fact that the defendants are members of the executive staff of an industrial enterprise can further be of importance if a criminal act is involved by which the interests of the persons working in the enterprise are prejudiced. In such cases it would be a question of the violation of the duties which the State has imposed in the interests of the well-being of the economically weaker members of the enterprise, the workers. German criminal law recognizes certain offenses by employers, for example, such offenses as are named in the German Trade Regulations. In all such cases, however, it is required that other special circumstances be present in addition to the fact of being head of the enterprise in order to justify a conviction. Thus, for example, in the case of a trial brought by subordinates the German Supreme Court adopted the point of view that there is, to be sure, an obligation to exercise care in assigning persons to work, but that the relationship of employer by itself does not create a duty of inspection and supervision, but only if special circumstances are present and to such an extent as is possible under the circumstances.

It is of course also imaginable that members of the Vorstand of a company join for an activity which is criminal, but is not detrimental to the interests of their employers, the stockholders, nor of their subordinates, the workers and salaried employees. In this case it would involve all offenses against the general provisions of criminal law. In such a case the criminal action has no inner connection with being a member of the Vorstand of an industrial enterprise. Then it would be necessary that the circumstances requiring punishment are present for every individual member of the Vorstand in his own person. The fact alone that they are members of the Vorstand cannot be taken as a basis for the theory that there is a common intent, a common responsibility. On the contrary, it must give rise to considerable doubts if it is alleged that just such a circle of persons joined for an action which is beyond their proper sphere of activity. I want to say with this that particularly clear and unambiguous proof must be produced and that circumstantial evidence is inadmissible. It must be proved that these particular persons had a common goal in mind. There must be particular facts which have to be examined and confirmed for every individual person. One cannot draw the conclusion that every person involved is responsible or that a presumption of responsibility speaks against him, because these persons were joined by chance or by other circumstances in the management of an industrial enterprise. In this connection I should like to refer to the statements made by Professor Metzger with regard to question 3 in his expert opinion dated 25 April 1948, which was submitted to the High Tribunal as Document Extrinsic No. 40, Defense Exh. 281.

The Prosecution did not produce this evidence of a specific responsibility. It did not even try to do so since such an attempt would have clearly shown that the individual facts

which it had gathered for the basis of its indictment would in most cases only apply to individual defendants. In order to be on the whole in a position to arrest the construction existing in their imagination, the Prosecution has rather assumed that the actions of every individual defendant were or must have been known to all the others. Moreover, it set up the theory that the defendants were obliged to exercise mutual supervision. With regard to this it must first of all be stated that only a purposefully acting person can be a participant in such a crime. An offense against the obligation of supervision constitutes only a delict of negligence. In order to be able to consider an offense against the obligation of supervision as a wilful delict, it would be necessary to prove that a member of the Vorstand wilfully violated his obligation to supervise in carrying out his will to participate in the commission of the crime. This was not even claimed by the Prosecution. For the rest, the Prosecution took the actual situation by no means into account. For one thing, it overlooked that in such an enterprise a division of responsibility is inevitably necessary in order to make this enterprise fit for operation at all. It furthermore overlooked that the individual person did not have a specialized knowledge of the individual business transactions, if these did not belong to the field in which he specialized. In practice, managing the IG made it necessary to divide the spheres of activity and to institute various sub-committees (Fachausschüsse); in order to be able to develop a reasonable management at all. Otherwise a terrible confusion would have resulted. Furthermore, it must be taken into consideration that it was not at all necessary that the individual members of the management of the enterprise were exactly informed of the happenings in the other departments since complete conformity of business practices was not required for production or for sales. It was not even necessary that f.i. the

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salesman for nitrocellulose was exactly informed of the sales practices of the sales department for photographic products. The customs with which the two departments had to deal were different, just as were the customary sales conditions of the two branches. Probably it was of greater importance for the salesman of photographic articles to conform with the sales practices of the competition than with those of his colleagues who were selling dyestuffs. The same can be said of the various fields of production. A relation between the individual products existed, if at all, only with regard to raw material, but not with regard to the final products. The methods and requirements of production were likewise different. There is no reason why such an enterprise should organize itself in a different way than was dictated by the actual requirements.

It is evident that the actual requirements led to decentralization. On the one hand this was already conditioned by the historical development of the individual firms which later on joined the IG. To make reference to this does not mean that an attempt is being made to withdraw from responsibility, it means that the actual conditions are being taken into account. It cannot be seen anywhere that there was an obligation to do otherwise, it would be the duty of the prosecution to prove such an obligation. In order to forestall this justified argument, the statement of the defendants that "I have had no knowledge of this", which was said to be ^Cprobable answer, was intentionally discredited as questionable in this trial even before the beginning of the taking of the evidence, for the purpose of obscuring the facts. It has been attempted to construe this beforehand as an evasion of responsibility. For a reasonable consideration of the facts as they really exist in such an enterprise, such an obscuring of the facts should be avoided and one should simply ask: "What I have had knowledge of

this or that matter? It is true, the Prosecution has contested that the question can be answered in the negative in all those cases in which the persons own field was not concerned. However, it did not make reference to any fact from which a legally founded presumption could be derived that the course dictated by the actual circumstances was unlawful.

In this connection, I should like to refer to the statements made by the former member of the Vorstand of the IG, Dr. Pistor, (Document Oster No. 18, Exh. Oster No. 19), concerning the historical development and the working methods of the Vorstand of the IG. The description he gave is so realistic that it cannot be disregarded. The conditions existing at the IG can perhaps be compared with those existing at a number of independent enterprises which finally were joined in a holding company. In such a case one would not think of making the heads of the individual companies responsible for the individual occurrences in the other companies, for the simple reason that all of them were joined in a holding company. It is not evident for what reasons one can, under similar circumstances, arrive at a different judgment only because a different legal construction has been chosen. The judgment of such questions must be based on the given facts. One cannot, as the Prosecution wants to do, force the facts into a scheme that exists only in its mind, which was only chosen for the purpose of supporting the unrealistic theory of the Prosecution.

I only want to show with the above considerations, that in the present case the common external characteristic of the defendants, i.e., that they had been members of the Vorstand of the IG, is no evidence for a common responsibility. On the contrary, especially in a case like this, the individual responsibility of every person involved must be proven if one wants to maintain the theory that all of them are responsible.

The crime alleged here is not crime as defined in common law, but offenses against agreements subject to international law. In first line, such offenses are committed by persons who govern the State. Such a crime has nothing to do with the aims of a business enterprise. It is a question of to what extent you can expect a member of the Vorstand of such an enterprise to take action if he believes he has found out that one of his colleagues, in accord with the political leaders of his own country, assists them in their efforts which aim at a criminal war of aggression. This would mean expecting the individual member not only to supervise and influence the business activity of his colleagues, but also their political attitude. If one should claim that the individual has an obligation to interfere, then that individual would not be in a position to justify himself before the courts of his own country with the argument that he wanted to put the principles of international law into effect with his activity, which is in opposition to his own government. This would moreover have meant for him that he would have incurred the risk of endangering himself, since he would have opposed the line of the Reich government. I do not wish to admit by this that I consider the theory of the prosecution as correct when I make these deliberations. I only want to prove the absurdity of its theory by stressing that even if such facts had existed, it could not have been expected of the individual defendant that he oppose the general policies of the Third Reich, by sabotaging measures which were in accordance with them. For the case that this construction, which is far removed from the actual situation, were to be considered correct, I should have to claim for my client that he was under duress. It could not have been expected of him to take any action. This would have resulted for him in being taken to

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account because of sabotage against National Socialist policies. This would have meant, even according to the Prosecution's statements concerning the terroristic regime of the Third Reich, an endangering of life and limb.

According to generally adopted principles such an interference could only be expected of him if it had some chance of success. I beg to stress that omission is only then relevant within the meaning of criminal law if the accused person had the possibility of preventing a criminal consequence by his action. In my opinion it is unnecessary to prove ^{that} the policies of the National Socialist government would not have changed in anyway if an individual person or several had opposed them in the manner required by the theory of the Prosecution. In reality nothing would have changed.

The second problem I have to deal with is whether in the case of my client the conditions of criminal intent are present.

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The Prosecution devotes many pages of its Trial Brief to extensive arguments in regard to the question of the subjective elements in this case. They acknowledge thereby the recognized legal principle that the question of the subjective element is of essential importance in deciding the existence of guilt or innocence. It is one of the requisites of the subjective elements of a crime that a defendant performed his action deliberately and on purpose.

The Prosecution has refrained from producing a proof of this guilt in the case of each individual defendant in this case, namely, that they by their action wilfully and deliberately served to prepare the way of aggression. In judging the objective elements in the case it has repeatedly been pointed out, that the various business negotiations of the I.G. which the Prosecution has submitted to the Tribunal could have served various intentions. They could have served especially for rearmament; to some extent one could also find a remote connection to a war of aggression. The question of the subjective element is therefore of special significance, since the difference between preparation for war (armament) and aggressive war is such, that it is in a large measure dependent on the intention of the political leaders who are the real actors in the matter and is less recognizable from outside circumstances. Many measures may serve for armament, but constitute a measure for a war of aggression if the trend of the state's intentions is of such a nature.

The Prosecution has declined to bring any direct evidence. It has not offered any evidence with respect to the ideas and intentions of the defendants. It has taken a different way. It tries to bring proof in an indirect way by pointing to a multitude of prosecution documents and advancing the allegation that the defendants were aware of the events which were dealt with in the documents. It comes to the conclusion that the knowledge of these matters must have given rise to the conviction that the efforts of the leaders of the Reich were directed towards a war of aggression.

and that the defendants had subordinated their own actions within the I.G. to these efforts. It thereby proposes to regard their agreement with the aims of the Reich and their approval thereof as proven.

In my Trial Brief I have subjected the documents of the Prosecution which are supposed to prove the subjective element in the crime to an examination. In this connection I have ascertained that two kinds of documents are involved. The first sort consists of those which are of a general nature and which have no connection with the activity of the I.G. The events noted in them are of a general political and historical nature. These facts were not only known to the members of the I.G. themselves, but to all Germans and also to all foreigners who were interested in European politics and what was happening in Germany. If the Prosecution now tries to draw the conclusion that the knowledge of these facts is to be considered equivalent to knowledge of Hitler's criminal intentions of aggression then one has to draw this conclusion also with regard to all Germans and with regard to the foreigners whose duty it was to observe the events occurring in Europe, the foreign statesmen. One can even assume that they had a better overall view than the Germans as they were not under the influence of National Socialist propaganda, and the system of terrorism which the Prosecution itself stresses as so terrible.

If one now considers the attitude assumed by the European statesmen toward Hitler in the decade before the beginning of the war, if one bears in mind that the foreign powers did not oppose him but took his attitude as an established fact, that one must come to the conclusion that these facts did not give rise to the knowledge which is alleged by the Prosecution.

In this connection, because of the conclusions which the Prosecution tries to draw respecting the knowledge of my client, I refer to his personal statements during his cross-examination by the Prosecution. When Mr. Synnacher suggested to him that one must have had doubts as to Hitler's friendly attitude, Herr Oster replied in a very impressive manner, that it was precisely

this attitude which became evident from the various measures of the foreign powers which diminished or dispersed the existing doubts and apprehensions. In this connection my client referred to the abstention of foreign countries in the Olympic Games held in Berlin in 1936, and furthermore to the Naval Agreement concluded with England and the Friendship Pact concluded with Poland. He gave his answer in a very simple but convincing manner and thereby refuted with respect to himself the theory of the Prosecution that Hitler's intention to engage in an act of aggression could have been concluded from the generally known facts which the Prosecution had presented.

Furthermore, in its Trial Brief the Prosecution has called attention to very long documents which deal with the activity of the IG during the years from 1933 - 1939. These references were also made with the intention of proving that the knowledge of these business occurrences should have left the defendants with the conviction that an activity of this kind could only lead to a war of aggression. In this connection I refer once more to the arguments given by me in my Trial Brief, where I subjected the most important of these documents to an examination to determine which of the business occurrences mentioned there were known to my client at the time; for knowledge of these business occurrences is the necessary prerequisite for drawing the conclusion desired by the Prosecution for the existence of the subjective elements of the crime with respect to him personally. None of the documents mentioned there refer to any business transaction which originated in ^{the} ~~the~~ sphere of my client. Very few of these documents refer to business events which became known to my client or should have become known to him by virtue of his position and the nature of his sphere of work. My client did not acquire any knowledge about most of the business events mentioned there; in any case, the Prosecution has not advanced the proof incumbent on it that my client had become aware of these occurrences.

Furthermore, I am of the opinion that the Prosecution, by this theory of proving their case the indirect way, puts itself into absolute contrast to the spirit of the International Military Tribunal, which the latter has taken into consideration in its judgment. In as far as this Tribunal cleared some individual defendants of the charge of participation in promoting a war of aggression, it did so because, as regards these defendants, knowledge of Hitler's plans could not be proven. These persons had at least the same knowledge of the general circumstances as was offered by the Prosecution to prove the knowledge of my client, because they, as high functionaries of the State or the Party, were in a more close contact with the leadership of the Reich than my client. I am astonished to remark the Tribunal of the statements my client made when testifying as a witness on his own behalf. He has explained that he had seen nothing of the war that is now. His information about the position and the work of my client has proved that this referred to matters outside of the events which were connected with the preparation for war. Rightly the International Military Tribunal took the view that, in order to find a person guilty of participation in promoting a war of aggression, a special knowledge of Hitler's plans would have been required. The Prosecution did not offer any evidence in this regard.

In as far as there are still doubts about this question, I refer again to the personal testimony of my client during the presentation of my case to the Tribunal. I believe that during his examination he not only gave an extensive picture of his activities, but also succeeded in establishing that his endeavors were in no way directed to the war. His activities during the decade as the leader of the Litreux Syndicate, the testimony shown by him in his conduct of international negotiations, the carefree attitude he displayed up to the first day of the war in going his way of peaceful progress, all this amounts to the conclusion that he

had not lost his confidence in a peaceful solution of the political conflict. If there was need for any proof at all, I believe to have furnished it. Herr Ceter surely strove for a war as little as the majority of the German people, and surely would have acted differently than he actually did, if he had anticipated a development as it turned out subsequently.

I am now coming to the charges the Prosecution made against my client in Count II of the Indictment, in connection with the incidents which it regards as looting.

In my trial Brief I have, with due consideration to the evidence, analyzed that part of the new stage which the Prosecution considers as spoliation and looting, and in which it asserts that Herr Ceter is involved. In my opinion, his actions, as shown by the evidence taken, do not justify the conclusion that he committed an act of looting.

Therefore, as regards this count, I wish to say but little more.

The personal examination of my client has shown that before the war he had successfully worked in the nitrogen sector, striving at an international understanding. There are but few spheres of international cooperation in which such a powerful tendency has prevailed as strongly as in the nitrogen sector. My client, when he was permitted to testify here in his own behalf, has stated that a reasonable attitude, based on the production and consumption situation in the world, could create but one motive, namely to cultivate and continue this cooperation.

He expressed his own attitude, when the war had interrupted the cooperation, in the following words: "I cultivated these friendly relations during the war with

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all the persons that could be reached, i.e., who lived in the occupied territories. My idea was not only to help where help was needed, but also to cultivate the business connections, in order to preserve something of the spirit of good will despite the war, and to resume the reconstruction when workableness had broken the threads." (Transcript German P. 10 350, Engl. P. 10715).

His general conduct during the war in the occupied territories is in agreement with this attitude, and has been confirmed by affidavits of many of his foreign business friends. I wish to supplement these statements by some general remarks. At our present time, when the waves of political agitation have not yet subsided in the world, it is not easy for a man living in one of the countries formerly occupied by Germany to make a positive statement or to submit such an affidavit for a person accused as a war criminal before the Military Tribunal in Leipzig. Reprehense and the suspicion of formerly having been a collaborationist may be the consequences of such an act. This is *f.i.* demonstrated by the case of the President of the Netherlands Bank, HEMMER, a business friend of my client, who submitted a statement on his behalf in a not certified form before the beginning of the trial. Upon my request to report this statement, in observation of the forms usual here, and with his signature certified, he answered me that he would rather not do so. Nevertheless, he gave his express consent that the formerly given statement, which has the same wording, might be submitted to the court.

Another example: If in the present situation *f.i.* the head of the Comptoirs Francaises de l'Azote, now, in office, Generaldirektor L. L. L. L., submits an affidavit on behalf of Herr Oster, and writes me in the accompanying letter, that it was a pleasure²²² him to do that for his friend Oster, this declaration, on account of

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the consequences it might entail, must be valued particularly highly. I wish to mention the case of Herr Lohng also in connection with the charges, made by the Prosecution in the course of the cross-examination of my client, of looting through importation of nitrate from the occupied Eastern European territories. I think that Herr Lohng would not have failed to note this alleged case of looting. The fact that he made the affidavit submitted by me might be taken as a proof that he sees the affair in a different light from what the Prosecution considers it to be. It would have been interesting to follow this question up further, however, with the difficulties the Defense encountered in collecting its material, this was not possible to the Defense before the close of the case is closed.

Furthermore, I respectfully ask the High Tribunal to give its attention to the affidavit of the Czech national, Herr D o b i n s, which I have submitted. Herr Dobias states that he owes thanks and gratitude to Dr. Oster for his behaviour towards his firm and his personnel. Regrettably, his own person, he made the reservation that it would have been better for him if Herr Oster had used the practices of the 3rd German Reich in power. This remark shows that Herr Dobias had been blamed, most likely for collaborationism, solely because he had served in my client's factory whose behaviour towards him was above reproach. That the charges of collaboration were unjustified might be shown by the fact that Herr Dobias continues to hold the position he had before the war in Czechoslovakia.

The statements of the two last named gentlemen, as well as of the others I was in a position to submit on behalf of my client, have, in my opinion, given a plastic picture of the way my client behaved during the war in the occupied countries. They furnish proof that what he expressed in his personal testimony is in fact in agreement with things as they were during the war.

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It would be inconsistent with the character of my client to have his conduct extolled here in very praising words. Also I believe that this is not necessary and that I may limit myself to the mere statement that the evidence has clearly proven my client not to be a man to whom the words of the Indictment, that it has been his endeavor to exploit and plunder the occupied countries, would apply.

Regarding the reproaches against him in the case of Norway, I can only say the following: The Prosecution has not presented a single document showing any sort of activity on the part of my client in the direction of plunder. What the Prosecution has presented in its Trial Brief is nothing but assumption and not evidence. If any counter-evidence is required at all, then this is available in the statement by Herr Erikson, the Executive Director of the allegedly plundered Norwegian company Norsk Hydro. No man would make such a statement, if his company was plundered on account of any action on the part of my client Oster during the time of the German occupation.

To Point III of the Indictment I refer to what I have said in my Opening Statement and to the statements made by my client here in this room during his personal interrogation on the witness stand. Since the Prosecution has submitted no evidence regarding this point, to which my client would have to reply, I can only refer to what I have already said at the start of my plea today, in regard to the responsibility of my client, as well as to the basic statements in reference to this point of the Indictment made by my colleagues within the framework of the agreed upon division of topics.

Your Honor

I have come to the end of what I have to say to the matter itself. In my plea I have tried to bring closer to your understanding the personality of my client, his position in the economic and political life of Germany in the past decade and his actions during this time that has been so difficult for Germany. I hope that I ^{have} succeeded in proving that he has not chosen a path justifying the reproaches made here against him.

For almost three years war crimes trials have been conducted here. By proper evaluation of the knowledge about the happenings in Germany in the past which have caused these court proceedings, and comparing them to the activity of my client, then in my judgment the result for him can only be that he does not belong here. I entertain the hope that this conviction will also prove to be the conviction of this High Tribunal.

Fish River Settlement
(Barren)

Case 6
Defense

FINAL PLEA

for

Dr. Hermann S C H N I T Z

Before the American Military Tribunal

Case VI

versus

Carl KRAUCH and others

by

Dr. Rudolf DIX

Attorney-at-Law, Frankfurt/M.

Dring



Final Plea SCHMITZ

Your Honours,

Allow me to preface my final plea with a personal confession. I believe that no judge can find the truth in this trial, or pass a just sentence, who considers as isolated phenomena, or, worse still, as a formal exercise, the organic developments which are here concerned, or who imagines that he can allow himself to set black against white, or who believes, that "facts" and "figures" alone suffice; but ^{who} fails to realize that he must plumb the depths of sociological and psychological research, if he would understand the complexity of those organic developments which connect the IG, and, therefore, these defendants with the origins, the rise, and the fate of Hitler and his third Reich.

When considering my client Schmitz and his fate, a concept inevitably comes to one's mind which the most intelligent nation which ever existed, the ancient Greeks, developed in the course of their philosophical quest: the abstract concept, and the concrete realization of a "moira", of ineluctable fate, whose experience of pleasure and pain is the predetermined consequence, independent of free will, of that "moira".

Exminently suited to the theory and practice of finance, interested in little else,

devoted in particular of interest in, and talent for, things political, a law abiding citizen, an excellent "craftsman" in the sense in which Hilda Gabler was in Ibsen's play of that name, he was a man who worked quietly in the seclusion of his study, who was averse to any kind of public display, and who was at the same time, as all the witnesses agree, a great humanitarian - in short the type of German who has always rightly been acclaimed throughout the world. But now, in the 68th year of his life, he appears as a defendant in a trial of a definitely political nature with a definitely political background, - a trial which has been linked by the world press and by the Prosecution with the dreadful and monstrous atrocities connected with the name of Auschwitz. A trial which involves world history, as it is one of the accusations levelled at the defendants by the Prosecution, that they intentionally helped to unleash, this, the most dreadful war of all times, that they were involved in the crimes committed by Hitler's praetorian guard, and in Hitler's rise to power and in the consolidation of that power, although Hitler, as the IIT stated, if he was not alone-guilty of all those things, had had a very small number of accomplices.

"How could it happen" is the striking title of the book by a certain Stechert, a socialist, working-class author, who describes with that expert knowledge and lack of prejudice in political, sociological, and psychological matters which is so rarely found

in politicians, cramped as they are by ideologies and party politics, the chain of cause and effect which led to the victory of the Nazis in Germany and to their abuse of that victory - a victory which the last French ambassador in Germany, François-Poncet, who was a man of very lively intelligence, has called "la victoire des boches sur les Allemands".

Well, my client always has been, and still is, an "Allemand" of the best type, which has rightly enjoyed, at all times, the esteem of the discriminating amongst the nations of the world: he is anything but a "boche". How did he come to be a defendant, sharing the fate of technologists, scientists, and business men, who by bringing about a praiseworthy alliance between scientific research and the practical exploitation, both scientifically and commercially, of such research, led a company, which must, a priori, and prima vista, appear to the keen observer to be a benefactor of mankind rather than a noisome plague afflicting it; it is an old story that a criminal government can deprive of their splendour the achievements of science - destined to serve mankind - and can make them the instruments of crime, or at least, of disaster. The fear lest such scientific achievements which might have brightened the lives of millions should be turned to such evil purposes has ever been a nightmare to those scientists and to those others who financed them or who had something to do with financing them, as did my client. This fear, in the person of Bosch, is described in a very moving manner by the witness Buecher in his affidavit, Document Schmitz

No. 6 Exhibit No. 6 Document Book No. 1. That your own atomic research scientists also entertain such fears, your Honours, is shown in a report with which I presume the Court is familiar, namely the Stimson report on the developments which preceded the decision to use the atom bomb against Japan. One should therefore think that we are in very good company amongst the defendants, and experience should further teach us, that, in the words of Hamlet, the royal philosopher, there is always "something rotten in the State of Denmark" when the prisons and the docks of the criminal courts are crowded with those who are usually numbered amongst the best of their nation. Thus it was for example a symptom of the corruption of Justice and of the life of society in the third Reich, that the physiognomy of the average prisoner took the place of that of the average defendant, that the criminal type receded into the background and his opposite came to the fore, - that the number of prisoners, detained awaiting trial, whom a defense counsel had to visit in the prisons of the third Reich actually reflected credit upon the defense counsel. The defense counsel visited in the course of his duty idealists from all sections of the population, Germans who had preserved intact their integrity of character and their independence of thought, representatives of socially elevated professions. The defense counsel visited prominent scientists and pastors, courageous leaders of the working class, honest soldiers and officers, in short, the elite of the nation, properly understood. Such a phenomenon is bound to arouse doubts as to the legal and moral justification even of such outward appearance. It is the duty of every judge to examine whether such doubts are in fact justified.

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Should he realize, that prejudice, fostered by falsification and by other legends, by party politics, by ignorance of conditions abroad, are the spiritual begetters of an indictment, he must approach his legal assessment of the "facts" with a maximum of circumspection, even, and especially, if on the face of it the facts would seem to suggest guilt, if only those things which I have described above as the result of legends, party prejudice etc., are accepted as true.

In his Opening Statement before this Court General Taylor has said: (I quote)

"... charges that the defendants, together with other industrialists, played an important part in establishing the dictatorship of the Third Reich. The aim of the defendants was conquest. The origin of the crimes with which the defendants are charged may be traced back over many decades, but for present purposes their genesis is in 1932, when Hitler had established himself as a major political figure in Germany, but before his seizure of power and the advent of the Third Reich. ... charges that the defendants, together with other industrialists, played an important part in establishing the dictatorship of the Third Reich"

and again (I quote)

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"When we charge an alliance between the defendants and Hitler and the Nazi party" ...

and again (I quote)

"without this cooperation, Hitler and his party followers would never have been able to seize and consolidate their power in Germany, and the Third Reich would never have dared to plunge the world into war."

"Farben's devotion to the Nazi party and the Third Reich continued to be irrevocable" (End of quotation)

and many other passages.

In this connexion the General, in the Flick trial, coined the phrase, which proved so attractive on first sight, of the "Unholy Trinity": National Socialism, Militarism, and Economic Imperialism. When referring to these statements of his in future, I shall use that slogan: "the Unholy Trinity" for the sake of brevity.

All the statements made by the Prosecution in the three industrial trials which have been or are being conducted here are therefore based on this thesis of the "Unholy Trinity", which is supposed to have been established as historical fact and therefore fit for acceptance by the court. The whole elaborate structure of the charges brought against the defendants is therefore based on the thesis that the captains of industry and economy - and, in this case, the leaders of the IG - and the generals put Hitler into power.

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This assistance, and more especially the financial assistance rendered by industry and therefore by IG, is not only supposed to have established his position of power, but also to have consolidated his dictatorship. And those industrialists, including these defendants, are supposed to have done all that in order to indulge their aggressive economic imperialist ambitions, even at the risk of war which might be the inevitable result of such a policy, nay even of a war, conceived in certain circumstances, as an instrument of such a policy.

But the Prosecution have not even attempted to submit evidence to show that industry in general and IG in particular had rendered such assistance, that the so-called "Unholy Trinity" had in fact helped Hitler to seize and to consolidate power. They have assumed that thesis to be historical fact, a fact which is generally known and therefore fit for acceptance by the court: that, at least, is the only possible explanation of the fact that no evidence in proof of that thesis has been submitted: there can hardly be any doubt that the thesis requires proof. Not even the Prosecution would, I suppose, claim that the statements of a factual nature submitted in evidence, or even circumstantially proven facts, and even reliable confessions made by the defendants themselves would be satisfactory proof especially in connection with the charges made in Count I of the Indictment, but also, implicitly, with the charges referring to the imperialist exploitation of foreign countries by means of spoliation and enslavement, unless they had assumed the thesis of the "Unholy Trinity" to be proven fact.

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But if the thesis of the "unholy trinity" is rejected, the circumstantial evidence submitted by the Prosecution loses continuity and cogency; it simply collapses. This will be proved conclusively in all the final pleas made by the Defense. In proof of my remarks in connection with the evaluation of evidence I shall only cite four examples: let us consider I.G. contributions to armaments production prior to 1 September 1939. One could perhaps call that contribution large considering the size and importance of the enterprise. The use of the adjective "large" depends of course entirely on the point of view of the beholder. But let us suppose, for the sake of argument, that those contributions to armaments production can be described as "large". If the thesis of the "unholy trinity" is rejected, the I.G. contribution for armaments production, for which, in the financial sector, my client was co-responsible, must be considered as completely harmless, natural, and obvious, devoid of any criminal character, without value as incriminatory evidence. It did not take the authority and the precedent established by the IMT judgment to show that armaments as such are neither criminal nor indicative of criminal intent. The opposite point of view would show the most peace loving of nations. Thus nobody has ever dreamt of accusing Switzerland, or is likely to do so, of pursuing a policy of aggression, or planning aggressive war; it is, nevertheless, common knowledge, that Switzerland has always endeavored in the interests of neutrality to adapt her armaments quantitatively and qualitatively to the demands of the hour. Is armaments production of these powers who are at this moment

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full of apprehension for world peace on account of the present international situation, to be considered as circumstantial evidence of plans which are criminal from the point of view of international law? To put that question is tantamount to answering it in the negative. But the I.G. contributions to armaments production would appear in quite a different light if the theory of the "unholy trinity" could be applied; in that case that thesis would prove that there had been a breach of the peace by aggression with criminal intent. The error in logic of a typical petitio principii is involved in the Prosecution's whole argument.

A second example: Any decent and peace-loving industrial enterprise will put at the disposal of the government and the army of its country, its archives, its foreign service, in short, the whole of its organization, if it is normally patriotic, even if no legal pressure or pressure of any ^{other} kind is brought to bear upon it. No man with any experience of life will blame a firm for such an attitude. - But such an attitude would appear in quite a different light if the thesis of the "unholy trinity" be true. Once again the same petitio principii in the evidence submitted by the Prosecution.

A third example: The defendants state that they had employed foreign workers in their plants unwillingly and under protest. That statement would not deserve credence if it could be proved that even before Hitler's advent to power the defendants had planned to put Hitler into power and to consolidate his position, in order to enable him to exploit foreign manpower by means of compulsory labor. The Prosecution's somewhat artificial concept of deliberate spoliation, too, would benefit considerably

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if the thesis of "unholy trinity" were true. And the fact that my client rendered financial assistance from I.G. funds to the Sudeten Aid Fund and its voluntary associations must seem to any unprejudiced observer as absolutely harmless in view of the political situation at that time. For details in connection with that statement I should like to refer you to our closing brief. All that would appear in quite a different light if it were an established fact that Schmitz and his colleagues had assisted Hitler in his attempt to seize power from the very moment when it became possible to do so, and had approved the aggressive and terrorist methods which Hitler used in the case of the Sudetenland and of Bohemia-Moravia. There are many more examples of that kind. They illustrate the flaws in the evidence submitted by the Prosecution. Their method in that connection is as follows: the value of the evidence submitted by them is based on the assumption that a false thesis, i.e. that of the "unholy trinity", is true; whereupon the attempt is made to prove that thesis by means of the fictitious value of the evidence, or to illustrate the point by means of point 1 of the indictment: if it were true that the I.G. had helped Hitler to seize and consolidate power on account of their aggressive and imperialist aims, their contributions to armaments production would have been circumstantial evidence in support of point 1 of the indictment. That argument could be applied, mutatis mutandis, to the other points of the indictment. A determination on the part of the I.G. to help Hitler to get into power could in the hand only be proved, could it be shown that subsequent contributions to armaments production

served deliberately aggressive purposes. The whole of that presentation of evidence is, putting it crudely, like a cat chasing its own tail, or, in legal phraseology, a typical petitio principii.

Thus the Prosecution open their case with a legend, the sources of which are tainted at all times, from which rises the fog of an accusation based on resentment. It is the duty of the judges to disperse that fog by the bright sunlight of their investigations, lest this trial, too, remain under the cloud of an error borne of the circumstances of the time which will, I believe, be viewed ironically in the verdict of history in the not far distant future (criticism is being voiced already). My client is a victim of that error. In our time it is the greatest possible misfortune which can befall a man, or at any rate, it involves him in the very greatest danger, to have been, or even to be at this moment, an efficient, successful man holding high office. That holds true even where the foundations of such success had been laid before the National Socialists came to power.

General Taylor has said that these men had not been indicted because they are industrialists. That may be so. But the only reason why they have been indicted - and I doubt if anybody can deny that - is because all the defendants were captains of industry, and were therefore in the opinion of the Prosecution, accomplices to the crimes committed by the Nazi regime, the findings of the IMT on the size and composition of the group of persons who knew, and who were guilty of these crimes, and the logical consequences of the IMT judgment, as well as the

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Flick judgment in connection with the precarious position of the German industry and therefore of I.G. with regard to the terrorist methods of the regime, being completely ignored.

Schmitz has become a defendant solely because he is a prominent representative of those whom the Present hunts down, and persecutes, owing to the mistakes and prejudices of the Spirit of The Age; i.e. a representative of the efficient men, who gained high office.

Allow me to remark in passing for the sake of completeness that a fiscal policy based on expropriation first deprives these efficient people of the fruits of their efficiency, and the pack will always find an opportunity of hunting such an outlaw down and of rending him apart, by printer's ink or in the interests of so-called political purification or in some other way. But Schmitz was a great expert on economics, holding the very highest office in industry at the head of a concern which neither was nor is particularly liked by the Spirit of the Age. The Nazi ideology, too, was fundamentally absolutely opposed to capitalism, one of the several points in which it agreed with present day ideologies.

Schmitz was not in the least interested in politics, and was exceptionally reserved, politically as well as financially, in his dealings with the Nazis, under whose domination he must perforce work and live, as is shown in the affidavit made by Krueger (Schmitz Document No. 108, Exhibit No. 101, Supplement to Document Beck No. V), Singer (Schmitz Document No. 73, Exhibit No. 73, Document Beck No. V) and Abo (Schmitz Document No. 72, Exhibit No. 72, Document Beck No. V).

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Yes, your Honor, even financially. Any man who is familiar with the avidity of the Party, which concealed under the cloak of charity and patriotism a beggarly, mean, and, in part, corrupt nature (of Goring's Birthday Gifts), who knows what disadvantages and dangers were incurred by those who tried to emulate in their financial dealings with the Nazis the chastity of Joseph, and by the firms they represented, especially if they were administering a well filled sack, as Schmitz did for I.G., will be greatly surprised to find, when studying the evidence submitted by us how infinitesimal are these political contributions of the I.G. to which the Prosecution objects, compared with its capital and with the sums expended on other social and charitable ventures. I shall refrain from dwelling at length upon the enormous sums which I.G. expended upon research in the first instance for its own sake, without reference to its presumable commercial value, because these eternally glorious deeds which I.G. performed as a benefactor of mankind will be graven upon the golden tablets of world history "sacra perennius", like the giant mountains unsullied by mistrust, hatred and fear, covetousness, error, prejudice or any other manifestations of the Spirit of the Age and of its "public opinion", of that Spirit of the Age which has put on the defendants' bench, to the incomprehension of all those who know him personally, this honest and industrious gentleman, my client. Such a fate is really not in keeping with the law in accordance with which he set out on, and led his life.

My excellent assistant Dr. Gierliche and myself have dealt with the details connected with these contributions and the arguments brought forward by the Prosecution

in the closing brief, partly to save time, but also because it is easier to read such things than to listen to them, I should only like to mention two points here:

Hitler had already come to power when the I.G. paid into the 3 million fund of the industry for the three government parties, the NSDAP, the Deutsch Nationale Partei and the Deutsche Volkspartei, and also, through von Papen, in effect for the right wing of the Zentrum, the sum of RM 400,000.-, being its due share, in February 1933. That Hitler had in fact been firmly established in power is shown by the fact that he was able to have the Reichstag put on fire by his minions a few days later, in order to dispose of the communist party, and that he destroyed a few days later, all civil liberties and the bulwarks of private business, and created the Gestapo, thus turning, even at that time, free citizens into fear-ravaged slaves. What, do you think, would industry have been compelled to pay, had they not paid willingly the sum of RM 3 million, ridiculously small as it was compared with the financial resources of industry and with the election campaign which was its ostensible object? Besides, an election campaign, which logically involved a free election, was out of the question, since the parties of the left had been crippled by terrorist methods. As far as the government parties were concerned, Hitler at first preserved the fiction of a coalition government of these four parties, but then proceeded to kill off his bourgeois partners politically. Schacht has rightly stated in Schmitts Document No. 30, Exhibit No. 30, Document Book No. II that Hitler could easily have procured these funds elsewhere.

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By making that contribution, industry did neither more nor less than it would have done for any government, i.e. to render comparatively negligible financial assistance, provided it could expect that the government would not be definitely hostile to private enterprise. But Hitler had said a few things in the speech which preceded the opening of the fund, which pleased industry. It was the habit of this amoral visionary, this lunatic and rat catcher, to promise anything to anybody irrespective of contradictions, because to him a promise meant only a political weapon and not an ethical obligation to be fulfilled. That was the case in economic policy at home, as in the above instance, and also in foreign policy, where broken promises succeeded one another in rapid succession. So much for the 3 million RM including the IG contribution of RM 400,000.- to which the Prosecution has attached so much importance in the industrial trials. Tant de bruit pour une coquille!

On the subject of contributions to the fund for the widows and orphans of the Waffen-SS and for the associations of Soldaten Germans - which took place after the Munich agreement - the defense counsels for the defendant Schmitt have again chosen to present their arguments in the closing brief. I should only like to add the following on the subject of the fund for the widows and orphans of the Waffen-SS: the IMR never so much as toyed with the idea of collective liability affecting the whole family; it gave a chance even to members of the SS of exonerating themselves. It was never directed against the widows and orphans of SS men killed in action. Such a fund is always hallowed; it makes all contributions

legal and ethical. The civilized world does not know original sin in that sense. It is similar to the fundamental idea of the Geneva Convention and the Red Cross - when the enemy has been wounded, or a soldier is ill, he is given exactly the same medical treatment as one's own troops. For similar reasons charity towards widows and orphans is not only entitled, but actually obliged, not to discriminate against them because their husbands and fathers killed in action had at one time been SS men. That is the point at which we enter the temple of human kindness of which Sorastro (Translator's note: sic) sings: "Within these sacred halls Man seeketh Man" etc. The remainder will be found in the closing brief.

Those charges brought by the Prosecution against my client which are not primarily directed against him or which merely concern him in his capacity as financial expert or chairman of the Vorstand will of course be refuted by the defense counsels concerned. I should therefore like to refer you to the pleas which will be submitted by my colleagues and to that which has already been submitted by Dr. Boettcher, Attorney-at-Law. The legal problems connected with collective responsibility will also be dealt with separately by one of my learned friends. I do not wish to anticipate their arguments which should be very interesting. The special position occupied by my client in his capacity as chairman of the Vorstand will be dealt with in our closing brief. I only wish to touch briefly upon the following point: there would seem to exist in this connection on the part of the Prosecution great confusion of thought and of the most incompatible interpretations of the concept of responsibility

and therefore a false conception of the meaning of the term of negligence in a penal sense. Will you please distinguish carefully between the various kinds of responsibility, moral, political, disciplinary, historical responsibility, and responsibility in civil and in criminal law. In the legal arguments put forward by the Prosecution all these concepts are used in such a manner as to confuse the legal issue. The crimes under international law with which the defendants are charged by the Prosecution are punishable only when they have been committed with intent or in cases of participation with intent, but not in cases of negligence, whether such intent be that of a co-principal, accomplice, instigator, or aider and abettor. "Conspiracy" is a different matter and will be dealt with separately by the defense counsels concerned.

In spite of the list given in Control Council Law No. 10 there is no getting away from the fact that it contains no forms of participation in such crimes with intent apart from those mentioned above which have been formulated by the classical Jurists: and that it cannot, by definition, contain any others. But within the scope of these clearcut legal concepts the element of guilt in negligence is relevant only if the person who acts negligently, i.e. in such a way that his action or inaction constitutes dereliction of a legal or moral duty, at any rate assumes the element, relevant from the point of view of criminal law contained in the material facts constituting a crime committed with intent in eventus in his will in that he consciously risks committing such a crime as the possible consequence of his action, thereby willing it eventualiter. We are in short dealing with the concept which the lawyer versed in criminal law calls "dolus eventualis". Beyond these narrow limitations negligence with reference to the charges brought against the defendants by the Prosecution in this case is meaningless.

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and only the question as to whether there had or had not been intent is relevant.

I shall now return to the concept of moira which I mentioned at the beginning of my argument. It was, as has been stated above, the moira of the defendant Schmitz that he occupied a prominent position in industry at the time of the third Reich. In accordance with the workings of the Spirit of the Age, that fact led to his presence on the defendants' bench, because the historically inadmissible and ephemeral legend of the alliance between industry, including IG, and Hitler, of the so-called "unholy Trinity" has been accepted as true by the Prosecution, who built upon that false thesis the whole structure of their case.

On behalf of the defense, and, therefore, on behalf of the search for the truth, I should like to acknowledge a debt of gratitude to this tribunal, because they did not make the fact that this fundamental thesis held by the Prosecution cannot be proved, an excuse for preventing us from disproving it, as happened in the Flick case, and as the Prosecution proposed to do in this case. The evidence consisted mostly in documents accepted as evidence by the tribunal and in the interrogations of the witnesses Lammere, v. Bauser, and Kestl. The composition and presentation of that evidence caused considerable differences of opinion between Prosecution and Defense and also between the Tribunal and the defense.

It was in my opinion impossible to disprove that these defendants belonged to a social stratum which helped Hitler to get into power and assisted him in consolidating it without showing at the same time

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which were the factors which led to disaster. Nothing happens without a cause. The second point we tried to prove, namely that the leading men of IG did not belong to those forces, made it impossible to link with the attitude of the leading men of the IG, the enquiry into first causes. Simply because they had nothing whatever to do with those forces and were, on the contrary, opposed to them. It is impossible to submit negative proof, that such and such a thing had not been the first cause, without at the same time submitting proof positive, that such and such a thing had been the first cause. It was therefore inevitable that the presentation of evidence should go back to the early history of the Nazi rise to power and to the consolidation of that power, i.e. to a very large, comprehensive and complicated subject, with which it was impossible to deal exhaustively in a trial, as everybody knew from the outset. The evidence submitted in a court of law can never become a substitute for historical research, which would be necessary, if the subject were to be treated fully. All it can do is to give pointers and light the way. Because falsifications of history and legends luxuriate after such historical cataclysms on the hidden forces by the attempts of guilty men and their accomplices to throw their guilt upon others, from retired, begotten by suffering, from the egoistical political interests of the leaders to the wielders of power in political life and in public opinion, the Prosecution, too, have succumbed to the danger of completely misconstruing history, few which, being foreigners, they cannot be blamed in the least. The task before this court is an almost superhuman one.

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to form a just estimate of such a difficult and controversial complex of problems, of which only he can form a just estimate who has studied it for years to the exclusion of everything else, or who knows it from personal experience. That difficulty has only arisen, because the Prosecution have put forward that unfortunate thesis of the "unholy Trinity" as quoted above in this trial and in all other industrial trials and have founded upon it the whole structure of their case. That is how I came to deal with this difficult and elusive subject, owing to the special theme of my defense. The fault is not mine. By making an attempt to disprove that thesis (more than an attempt was out of the question in the circumstances), I did no more than my bounden duty, since that basic Prosecution theory could not be allowed to go unchallenged.

The evidence speaks for itself, documents as well as testimonies. Although I was overruled on many points, it demonstrated at least the truth and accuracy of two theories contained in two documents, the contents of which have in part become evidence, and may in part, having been identified, at least be quoted in the course of my argument. The first theory occurs in Stecher's book "How could it happen" which analyses from an elevated point of view the problems and the complexity of the past: (I quote)

"The popular theory that the big German industrialists assisted Hitler politically is materially false. It is even more legendary than the theory that the Reichswehr had consistently and deliberately aimed

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at world conquest. It might serve the purposes of political expediency to spread such legends, but the historian must be prepared to explode even those legends which might be extremely useful to him politically." (End of quotation)

The second theory is contained in Heiden's book:
ADOLF HITLER, THE AGE OF IRRESPONSIBILITY, (Europaverlag, Zurich,
1935, p. 311)

(I quote)

"In accordance with a well known legend the German industrialists KREPP, REYSSER and VOGELER together with the Junkers from East of the Elbe have made Hitler, the little corporal, the Proturist of the first Germany, so that he should do the things on their orders which he has been doing for the past three years, or 'a worm's eye view of world history' And a few lines further on 'By the way, the three big industrialists who have to their credit the most concrete and noteworthy achievements of the post-war years, Karl DOISSERS and Karl BOSCH of the IG Farbenindustrie, and Karl Friedrich von SIEMENS, director of the concern of that name, did not assist Hitler, but opposed him". (End of quotation)

I should like to quote further a passage from a book which I recommend you, Your Honours, to study together with the books by STECHERT and HEIDEN,

if you will gain a scantling of insight into this subject which is bound to be a closed book to any foreigner: from a book by Konstantin SILENS, (published by Birkhauser, Basel 1945, p. 126)

"Personal ambition may have played a part as it always does, but to assume that a group of ambitious big industrialists, big land owners, bankers and generals, the "moneybags" and the "sword wavers" had "made" Hitler and then put him into power, would be taking a naive and superficial view of things. They had no more to do with the "making" of Hitler than they did with the "making" of the crisis which gave him his chance. The membership of the Nazi party was rapidly growing in all classes and professions, and so many members financed the Nazi movement not undoubtedly entirely for selfish reasons, that it could presumably have got by without the finances of the "Ruhr" or of any other particularly prominent group of persons."

(End of quotation).

In order to pronounce just sentence it is not necessary that this Tribunal should be familiar with the underlying causes of developments in Germany from 1919 - 1945, or should have an exact idea of individual or collective guilt. But the Tribunal must realize that the great enquiry into the origins of and criminal liability for those catastrophic developments cannot be answered in the primitive manner in which the Prosecution answers it, especially by the theory of the "unholy Trinity", and that that thesis in particular is false. That seems to me to have been proved by the evidence accepted by the Tribunal.

in the evaluation of which it will of course require all its human understanding, political experience, knowledge of life, and general knowledge. Perhaps those members of the Prosecution who were born in America have become the victims of a typically American idea derived from American history. In the United States the State has been created by the citizens. That has never been the case in Germany. In Germany the citizen always found the State already in existence, a priori towering above him, to which he and some of his fellow citizens were actually opposed. In Germany, economically powerful middle class groups have never had the power to influence the formation of the State, nor could they have had such power. To this date the fate of Germany has always been determined from the outside or by individuals, at one time by the princes and the leading politicians, in recent times by a demagogue and usurper of the first order, or by anonymous forces, which cannot be brought to trial. The parliament of the Weimar government, too, which was based on proportional representation, the Reichstag of the Weimar interregnum, did not represent the people responsibly since responsibility was anonymous. That applies also to the party bureaucracy of the Weimar period. With apologies to Goethe, the creators of the Weimar constitution "willed the Good", by trying to prevent irresponsible government, "but created Evil" in a parliament of anonymous irresponsibility. Contrary to the hopes of its founders, the citizen of the Weimar interregnum lacked a sense

of co-responsibility for the affairs of government.

The same applied in Germany to the power of money. That, too, has never been able in Germany to influence political developments or the structure of the state, as the wealthy bourgeoisie did in France after 1830 under the citizen king. Those members of the Prosecution who were born in Germany and grew up into manhood there will agree with me on that point: in any case they will be unable to refute my statement.

It was inevitable that as far as this point was concerned the evidence which was in the nature of things limited should prove nothing except the fact that big industry, at least IG, did not function as a source of funds before Hitler came to power. Hitler's financial resources will form an interesting chapter in the objective historical research of the future. The documents submitted, especially the letter written by the former Reich Chancellor Brüning, published in the Deutsche Rundschau, Schmitz Document No. 101, Exhibit No. 104, Document Book No. VI, show, that they did not come exclusively from German sources. It is perhaps unnecessary at the moment, nor is it, one suppose, advisable from the point of view of international political tact, to go into details at this moment. The reasons for the increase in the international political prestige of the Hitler government after they got into power are also to be found chiefly in the attitude of foreign countries. In this connection too foreign countries increased Hitler's prestige by bestowing honours upon him and by political concessions, thus providing some extremely strong steps for an initially weak core of moral and especially foreign political authority. Concessions, successes, and honours, which foreign countries had denied to the

Weimar Republic, struggling as it was for political recognition. The failures of the Weimar Republic in the field of foreign policy considerably weakened Weimar democracy, whereas the way in which Hitler was treated strengthened his position and that of the Third Reich.

When the number of seats in the Reichstag of Hitler's party increased from 12 to 107, the whole world started to compete for his favour. If I had the time I could quote from the press and from world literature for hours. But it is quite sufficient to read the Harast press of that time or the Knickerbocker interviews.

Lloyd George declared in 1936 (I quote):

"Hitler is one of the greatest of the many great men whom I have met in the course of my life. Hitler is the George Washington of Germany".

I shall pass over in silence Lord Rothermere's outburst in the Daily Mail. Even a man like Churchill praised Hitler in public, wished his country had a man like Hitler at a time of emergency, and advised the late State Secretary under Kaiser Wilhelm II, von Kuehlmann, to join the NSDAP, and the Times wrote in March 1938 (I quote):

"It was one of the gravest mistakes of the peace treaties to prohibit the union between the Reich and Austria".(End of quotation)

But today the Prosecution blames those men on the defendants' bench for having rejoiced at the reclamation of that ancient dream of the German Austrians and of the Germans in the Reich, the so-called "Anschluss", without having done anything to bring it about.

in complete ignorance of the event or of the methods by which Hitler realized that dream. I could go on quoting free documents which are common knowledge the world over for hours.

What then was the main factor contributing to Hitler's success in the world and to the present misery of the world? Are the gentlemen upon the defendants' bench to be numbered especially among those who have played an important part or have incurred guilt within the scope of those motive powers which are the first causes of this world catastrophe? That is the question we have been examining for the past nine months. The answer to that question must in my opinion be in the negative, and it involves acquittal. Which were the factors which contributed in the last analysis to Hitler's success is a question on which one could speak for many days. I shall limit myself to one quotation, which does not deal exhaustively with the problem, but does at any rate throw a modicum of light upon it. Sumner Welles says in his book "The time for decision" Edition for the Armed Forces, page 38 (I quote):

"It is strange now to recollect how lightly the rest of the world accepted this portentous development. It was only very rarely - and surprisingly enough least of all in the Foreign Offices of the Western democracies - that Hitler was seen to be the spearhead of the most evil force which had come out of Europe since the conclusion of the first World War. Business interests in every one of the democracies of Western Europe and of the New World welcomed Hitlerism as a barrier to the expansion of Communism. They saw in it an assurance that order and authority in

Germany would safeguard big business interests there"

(End of quotation).

There were many people who thought like that not only in the States, but also in Germany, and there were very few indeed - and I suppose it was the same abroad, - who recognized at that early date that Hitler was anything but a bulwark against Bolshevism, but was on the contrary himself the prototype of a Bolshevik, at any rate in accordance with the Western world's conception of a Bolshevik, be that conception right or wrong.

As far as the alleged ⁴complicity of these defendants in Hitler's seizure of power and in the consolidation of that power is concerned, the defense can afford to limit its refutation of those charges to this general evidence and to these arguments. I have dealt with the further accusation of an alliance between the defendants and Hitler's plans for aggressive war in the opening passages of my plea; my colleagues will submit further arguments on that subject for all defendants, including my client Schmitz. I should like to state in this connection, quite briefly, the following: I myself have no doubt at all that the last war was not a defensive war on Hitler's part, but that it was rather "his war" in the sense in which the Empress Eugenie used the phrase when she said: "c'est ma guerre". But I also know, from personal observation, that what Silanz says on page 188 of the book quoted above is absolutely true. (I quote): "The nation wanted peace, the whole nation, workers or scholars, farmers or bankers, industrialists or high civil servants. The number of persons who knew what was the next point on the program

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e.g. the attack against Poland, was undoubtedly surprisingly small. The number of those who began to fear that Germany was embarking upon an irresponsible policy, was slightly larger. One of the directors of a large German bank said to me in private one week prior to the outbreak of war: "We must avoid war in all circumstances. Frontier adjustments (that was the only problem which came to his mind at all) do not justify bloodshed nowadays." That was the opinion of the vast majority, if not of all the leaders of German industry in responsible positions and of the highest civil servants and generals. Hitler betrayed his country, when he unleashed the war in Europe."

(End of quotation)

My client Schmitz was one of the many who just could not imagine that Hitler would use for purposes of aggression, which were as frivolous as they were stupid, the war potential, inadequate as it is proved to have been for a major war in 1939, to the building up of which I.G. had of course contributed its due share, as a firm which was not commercial but patriotic, loyal to its country, but at the same time open and receptive to outside influences.

I have nothing to say on behalf of my client with respect to the other points of the indictment; which I shall leave to the defense counsel concerned to refute.

We have reached the closing stage of the highest industrial trial of all times with a strong political background,

in which the defendants have also been charged by the Prosecution with purely political crimes such as conspiracy aiming at aggressive war. In Schneider Document Book ¹²8, Document No. 161, submitted by my brother, there is a religio-moral-philosophical expert opinion of the highest quality, written by Pribilla, a member of the Society of Jesus, which is in keeping with the highest traditions of that order whose scientific training and knowledge of life have become proverbial. It contains the following passage

(I quote):

"In re-reading my expert opinion it appears to me like a comment, expressed in the language of today, on a statement which a Pope who was a Saint and also a prominent politician recorded in an age of confusion and turbulence like ours, in the era of the migration of nations. Special importance has been attached to the statement, since it was included in the corpus juris canonici to throw light upon the path which the lawyers were to tread. Innocent I 401 - 427 wrote in his letter to the bishops of Macedonia on 13 December 444:

"It often happens when whole nations or a large number of persons have erred, that many crimes go unpunished, because it is impossible on account of the numbers involved to bring everyone to justice. When that happens the past should be left to the judgment of God, but care should be taken to provide for the future with the greatest possible circumspection."

Pribilla then continues "our age ought to ponder the wisdom of that counsel."

Well, your Honours, we live in an age, and have passed through times of "confusion and turbulence" which are unrivalled in the history of the world. The problems of criminal law confronting the judges of that time cannot have been more difficult to solve for the human mind in the 5th century than they are now. But we have chosen a different course, by attempting to find out, by means of these trials, who were the guilty men. It is not my business to criticise that decision of your government influenced as it was mainly by political considerations. You will have noticed that my personal attitude to such an undertaking is one of extreme scepticism. As far as I am concerned, I have been persuaded by Innocent I. That personal conviction can only be strengthened by passages like the following which is taken from the book by Syrett Wallis which has been quoted above in the post war period in America after the first world war, page 69 (I quote) :

" Senate committees were indulging in long drawn-out sessions to prove that the country had been plunged into the first World War solely because of the machievellian machinations of the arms manufacturers and of the international bankers".

There is, after all, nothing new under the sun. And the philosophic axiom "history repeats itself", is, I am almost inclined to say, unfortunately true.

And so is the human tendency to seek scapegoats for all disasters of which the origins are complicated: and thus legends are born like the Prosecution legend of the "unholy Trinity".

When Hitler suffered reverses, the cry went up "the Jews are to blame". The place of the Jews as scapegoat has now been taken by

the "blasted capitalists" (Schlichtbarne), which is the term of abuse now publicly bestowed upon the industrialists. Every age has its own scapegoat. Such human weakness becomes dangerous only when it affects the search for truth and thus the practical administration of the law and historical research. That is the reason why those wise people, the ancient Greeks, depicted Dike, the Goddess of Justice, with a bandage round her eyes, to protect her against the pernicious influence of contemporary prejudice.

Your Honors,

I have reached the end of my statement.- When at Spa after the end of the first world war the delegations of the Allied Powers and of Germany were discussing the question as to whether the so-called war criminals of the time should be brought to trial, an eminent British lawyer, a member of the British Delegation, during a recess approached a friend of mine, who was a member of the German delegation, put his hand on his shoulder and reassured him with the following words:

" You know, it has nothing to do with any vindictiveness
it is only to punish those fellows who have really
done wrong".

I am convinced that that is also the intention of this Tribunal:

" To punish only those fellows, who have really
done wrong".

But pray, your Honors, bear in mind that the list of the war criminals at the time was headed by Kaiser Wilhelm II and General-Feldmarschall von Hindenburg. Whatever has been or will be the verdict of history upon the last German emperor as a person and as a politician,

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it never did regret and never will regret that a wise and chivalrous sovereign, the queen of the Netherlands and her government opposed the Allied demand that the Kaiser be surrendered thus sparing the world the spectacle of the "Emperor on the defendants' bench". And as for Hindenburg, less than six years had passed when the ambassadors and envoys of those powers which six years previously would have him brought to trial presented at a ceremonial reception, making their ^{oath} in accordance with the protocol, the credentials of their governments to "Reich President von Hindenburg". Times and opinions change rapidly.

But your verdict, your Honour, must stand amidst the changes of the times and of opinions like a Rocher de bronze. Otherwise it will not have fulfilled its historic mission. May God bless your deliberations.

With reference to the evidence submitted on behalf of the defendant Schmitz, to our closing brief and to my final plea delivered today I request you, your Honour, to acquit my client, and to release him from jail.

Final Piles Schmitt

~~CONFIDENTIAL~~

27 May 1948

I, Leonard J. LAWRENCE, ETO No. 20138, hereby certify that I am
a duly appointed translator for the German and English languages
and that the above is a true and correct translation of
FINAL PILE SCHMITZ.

Leonard J. LAWRENCE
ETO No. 20138



Pinelisa, Schneider (Burrill)

TRANSLATION OF FINAL PLEA SCHNEIDER
OFFICE OF CHIEF OF COUNSEL FOR DEFENDERS

Case 6
Defense

FINAL PLEA

of Defense Counsel Dr. William Dix

before

American Military Tribunal VI

in Case VI:

Karl RAUCH et al.

in behalf of

Dr. Christian Schneider

Jung



FINAL PLEA SCHNEIDER

Your Honors,

As I already declared in my Opening Statement, I am, within the frame of the total defense, entrusted with dealing with the legal problems of compulsory foreign labor in Germany. Six of my Document Books also served this purpose. With these I intended to show the legal evolution of labor service in Europe in the course of this century, its development by the German Government in the last war, and certain problems which are of importance in judging the responsibility of German private economy, in particular of the individual industrialist, 60 years ago, under the predominance of intellectual liberalism in the sphere of law and economics, forced labor and labor service were as good as unknown in Europe. The technical and economic necessities of the two great wars, the influence of political dogmas of the most diverse schools, and finally considerations with regard to the hard working levels of the population have brought about a great change in this respect.

Already in the last world war Germany was not the only state which introduced labor service, in order to make allowance for the demands of the large scale technical war and for the wishes of large circles of the population. But even after peace had returned, one did not return to the liberal conceptions of pre-war times. The conviction that everyone could dispose of his working capacity according to his requirements and desires had been shaken. In 1926 many European and a number of non-European states concluded the Anti-Slavery Agreement, which I have submitted.

Primarily this was meant for the suppression of the slave trade and slavery, i.e. of the right to own a human being. But at the same time and by way of contrast, it permitted under certain conditions, labor service and forced labor, namely for public purposes, as is shown by the wording of Art. 5, Subsec. 1 and 2 of the Agreement, even without compensation and including a change of residence. The word "zwangsarbeit" was already at that time translated in the English version as "compulsory or forced labor", and thereby differentiated in the legal language from slavery or "slave labor." The USA entered into this agreement only with a reservation. To be exact, they did not accept the abovementioned Subsec. 1 of Art. 5 about forced labor in the public interest, and thereby guided by their traditional conception of the freedom of the individual. However, this makes it all the more distinct that the legal evolution in Europe did not take a different course in the authoritarian states alone, but only Germany and Russia reintroduced, as I have proved, obligatory labor service before the last war. In France, too, just like in Germany, certain groups of foreigners living within the commonwealth could even be drafted to compulsory labor service. In Europe, where a foreigner still had usually remained free during the first world war, due to his geographically closer tie to his home state, from such strong personal obligations in his host country, this was considered a hardship. Nevertheless, this conception prevailed, even Sweden, for instance, which abided so faithfully by constitutional norms and liberal thought, in 1939, after the war broke out, introduced in principle compulsory labor service for foreigners living in Sweden too. Thus, compulsory labor has to a large extent become a fact in Europe during and even now, after the third world war. I only wish to remind of the terms imposed on Germany in 1945,

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and of the detention of many of its prisoners of war up to the present, 3 years after the cessation of hostilities, even a few decades ago one would have deemed such a development impossible, and even now it is considered by many a great hardship.

But there can be no doubt that this development may not be left out of consideration, either objectively or subjectively, when judging the problems of labor service and forced labor in this case. To be sure, here it is not a question of a compulsory labor service which a state has introduced of its own initiative within the boundaries of its state, but of the enactment of such in countries occupied or otherwise influenced by a foreign power. For this, the International Military Tribunal found Sankel guilty, and sentenced him for war crimes and crimes against humanity on account of the Nazi-Socialist program of compulsory labor for foreigners.

Now the Prosecution also designates an automatic consequence of the effects of this program as a war crime and a crime against humanity, punishable by international law, and therefore accused a number of former leaders of the German economy, among them in this hall those of IG, because they had to employ foreign forced labor in their works. In this connection, the Prosecution repeatedly designated it as irrelevant whether the persons in question rendered themselves personally guilty of an act of inhumanity through such employment. It sees the crime solely in connection with this program and in the employment of forced labor, and supports its view point above all by the verdict of the International Military Tribunal and the Hague Rules of Land Warfare.

But it must be considered that the IME has dealt with the program of forced labor as a whole with all its terrifying concomitants, in particular as regards the recruiting of the persons liable for service, and has sentenced the men, who in this respect primarily had the political responsibility. However, it did not investigate the problem of the extent of the guilt of those persons who as members of the German military and administrative apparatus, were automatically bound to execute this program, or who as Betriebsführer, had to employ these involuntary workers. Millions of them, for that reason, are at liberty, unless they personally had committed some outrage, and are following their professions again - some of them in responsible positions. I refer only to some of the witnesses heard in this hall. The Hague Rules of Land Warfare of 1907, on which the prosecution bases its claim originates, however, from a period when, as outlined above, compulsory labor was as well as unknown in our civilization culture, and mankind had not yet experienced the consequences of a large scale technical war. The creators of the Hague Rules of Land Warfare therefore surely did not even think of the legal problems deriving from that. These rules alone, therefore, cannot be taken as a basis from which to solve them. In the 1st World War, however, the questions resulting from them already became actual. At that time, the German government and military authorities removed working forces from occupied Belgium, and employed them in the German industry. The German authorities gave as a reason for these measures that they were necessary for fighting unemployment, and thus were necessitated by art. 43 of the Hague Rules of Land Warfare for the sake of maintaining public order. Upon request of the Allies

General-Fieldmarshal von Hindenburg, is one of the principal responsible for these deportations, was accused of a war crime after the war. The German Supreme Court squashed the proceedings against him in 1925, because those measures were permissible by Art. 43 and 52 of the Hague Rules of Land Warfare. In the same year, Hindenburg, without protest from abroad, became President of the German Reich, and in other respects, as I have proven in my Final Brief, the German view point in this Belgian question also met the full approval even of jurists of former enemy countries, a majority of the German Reichstag Commission under the chairmanship of the Communist and pacifist Professor Scheuchner, the internationally renowned German expert on international law, who was also a member of the Hague International Court, came in 1926 to the same conclusion as the German Supreme Court did. It pointed out especially that the unemployment in Belgium during World War I was caused by the English blockade of the German sphere of power, and that this blockade, according to the opinion prevailing with the majority of nations at the beginning of the war, was not in agreement with international law. The Commission furthermore suggested a new regulation of these questions giving the greatest possible scope to humanitarian considerations. However, this was not done, and so they became acute again in the last war.

With regard to the great variety of its modalities and problems a short review of this development is also necessary, at any rate with regard to the subjective guilt or innocence of German industry, and thereby also of these defendants.

The only country, in which the German Government in the first years of the war enacted compulsory labor service, was Poland. The latter, after the destruction of its fighting forces, was in its entirety

occupied by Germany and Russia in 1939. Thus the two governments, by reason of the theory of Debilitation or Subjugation, maintained the view that the sovereignty of Poland did no longer exist and governmental powers in this country had become vested in the occupation powers. On this reasoning they based their measures, f.i. the introduction of compulsory labor service by Germany in 1939. The United Nations, in regard to Germany and its new compulsory labor laws in existence since 1945, took a similar, even if slightly modified point of view. If the IMF asserts that for the duration of the war Polish forces for the reconquest of the country were still in existence, it must be considered that they had to be organized first, in the course of time, from Poles living abroad, and that at any rate the German population on account of news censorship heard of them only very late. The individual German citizen therefore could not be expected to ponder this. Obviously the present occupation forces in Germany also share this view point to a great extent. Thus, many German officials of the former occupation authorities in Poland are again employed in official positions. I mention only the case, known through the press, of the present Minister-president of Lower Saxony, Kopf, who was employed in the Haupttreuhandstelle Ost (Main Trustee Office east), i.e. engaged in the liquidation of Polish national property. Then, however, the German business man who employed forced Polish labor cannot be punished either.

With the exception of Poland, the German Government during the last war up to 1942 introduced only foreigners, recruited on voluntary application, into the internal economy as working forces, and in this it was undoubtedly favored by the difficulties caused by the blockade as well as by other conditions. However, with the war situation becoming increasingly acute for Germany, and with the steadily growing demands upon the German population for service within the armed forces,

the voluntary foreign working forces did not satisfy the demand any more. In the winter of 1941/42 the responsible men of the German Socialist regime therefore decided to use compulsion in procuring the necessary foreign labor. The measures required for this aim, as the Documents of Propaganda and Defense show, came into effect in the course of the year 1942.

Thus, as testified by the witness Stethfanz, the first transports of involuntary labor forces from the East arrived in Germany at the beginning of 1942. In this respect, the German Government was of the opinion that in its relations to Soviet Russia the Hague Rules of Land Warfare did not apply, because they were denounced by the USSR, and neither did the latter abide by them, as a matter of fact the Soviet Union, as shown by the Schneider Documents, demanded compulsory labor by everyone within their sphere of power, outside the national boundary lines as well, on the basis of their state-socialistic ideology. Beyond this, the German authorities to a large extent were of the opinion that the re-allocation of Russian labor forces to Germany proper was necessary to maintain public order, and was therefore justified according to the Hague Rules of Land Warfare, not also because of the extensive unemployment, caused by the Russians by dismantling and removing the machinery equipment of the economy, as well as because of the well-known Russian danger. Finally the German Government, when withdrawing its troops, considered a removal of the people fit for military service necessary and justified, in order to prevent their subsequent conscription into the Russian army. Great Britain, too, to give an example, in the two world wars, interned in England the Germans fit for military service, taking them f.i. right from board of neutral ships.

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The reference to these complicated problems resulting from the German forced labor program in Russia shows that for a German subject it was impossible to argue about these things with his government in war time, let alone, to oppose it. In this connection, the fact must not be ignored that quite a number of Germans knew of the partisan danger and the difficult economic conditions in the occupied territories of the Soviet Union. Often, they knew also from their own experience that, to quote an example, the International Red Cross privileges were not applied to German prisoners of war in Russia, so that in this respect the customary international usages were not observed. However, the abuses occurring in the conscription and collection of the labor force in Russia, as were condemned by the IMT, were, as results from the testimony of Stething, known in Germany only as rumours, which could hardly be verified, and even caused some humanely thinking German officials to grant to these wretched people outside the operational and occupational areas better living conditions, which they in fact enjoyed in the German industry as a rule, even according to the Prosecution documents.

In as far as the German occupation authorities introduced, after 1942, in the other parts of Europe compulsory labor for the inhabitants with deportation to Germany, the above-mentioned considerations concerning unemployment, partisan danger, securing in case of withdrawal those inhabitants who were fit for military service, etc., played their part in the decision, also from consideration of public order according to article 43 of the Hague Convention. In this respect, too, the private business man, who ignored the real state of affairs and the official documents, could not possibly argue with his government about whether or not ~~these measures were justified~~.

These measures were justified.

(Pencil text contained in Transcript 4 June 1948)

declared, 10 years after the first world war, its inability to give a clear picture of the real conditions prevailing in 1917.

Apart from that, labor from a large part of Europe was made available to Germany on the basis of treaties and agreements with the governments of the countries concerned. Probably most of these foreigners came voluntarily. But even, in as far as they had been forced by their governments, a German private individual had no right to examine that question. The same thing applies also to those cases in which the governments concerned were forced by Germany to conscript and deport workers. For international law and its theory ignore as is shown by my documents and as the Germans themselves experienced in the course of the past 30 years, the exception of duress. Finally, if the Prosecution explains that those European governments had been illegal and only puppets, this too is not correct. For, at Vichy and in various Belgian states, diplomats of the neutral states and even of the United Nations were still accredited for a long time during the war, which amounts to a recognition of the governments in question as legitimate ones within the meaning of international law.

But it is necessary to add the following fundamental statements: As already mentioned, the Hague Convention relating to Warfare on Land has evolved under legal, military and economic conditions completely different from those prevailing in our times. The modern blockade was not yet known and the question whether or not it was admissible according to international law was at the beginning of the first World War to say the least, contentious in many countries of the world, so in the United States. The same applies accordingly to the modern war in the air and its terrible effects, which are incompatible with the meaning and wording of article 25 of the Hague Convention, *about the prohibition of unprotected hindrances,*
likewise

residential buildings. Likewise not one of the belligerent states observed, according to the opinion of the IMT in the case of Knoder, in the submarine war, the 1936 agreement during the years of 1939-1945. But all these potent weapons of the technical war at sea and in the air with their far-reaching and drastic effects upon production, supply and the whole existence of the civilian population, were only weapons of the modern total economic war, a struggle, not only of the military forces, but of the nations, the significance of which was recognized above all by the Anglo-Saxon doctrine of international law. It made the working potential one of the fundamental problems of warfare and became, out of military necessity, doubtlessly one of the chief reasons for the forced labor program of the National Socialist government. Military necessity and its importance with regard to international law, however, are also recognized in the preamble to article 25 of the Hague Convention. And by this, the continuous evolution of international law in regard to the modern air war is recognized. Thus, the IMT makes, quite correctly, the following general statement:

"The laws of war are derived not only from conventions, but from the usages and customs of the states which have found more and more general recognition, as well as from general principles of law, which were worked out by jurists and are applied by Military Tribunals. These laws are not rigid, but follow the needs of a changing world by adapting themselves continuously".

May this not apply also to the interpretation of other articles of the Hague Convention, to which the Prosecution refers?

According to its motives, article 52 has been evolved out of the ideas and needs of the 19th century, previous to the developments of the large-scale technical war, and makes as little allowance for its necessities as article 25 concerning the protection of undefended residential premises does for the modern air war.

Article 46, however, does, according to its wording, not even protect liberty and right of abode of the population. In view of the military importance of the working potential and compulsory labor to work in the modern large-scale war, no unconditional ban on forced labor may be derived from it. This was, as I have proved, after the first World War also the opinion of leading German and foreign jurists. This brings the contradictory nature of the forced labor program and its evaluation by the individual citizen into the open.

On the other hand, the opinion that Germany is not entitled to take advantage of all these arguments, she being the aggressor, is refuted by the consideration that to make a distinction between the various obligations and rights of the belligerents during the war is not practicable. This was, in fact, recognized by these tribunals, e.g. in Case 17. A different attitude would, as a matter of fact, mean the end for international law, since in a war each party is in the habit of calling itself the attacked one.

But apart from the above discussed contradictory nature of the issues relating to international law, there were other reasons and considerations which made any opposition against the National Socialist labor program during the war absolutely impossible or ripped it in the bud.

In any case, no one in Germany or the neighboring countries saw at that time any connection between these measures and slavery or slave work, with all its international defamation. Compulsory labor by order of the state had become a general phenomenon and even those who rejected that obligation and the regime as a whole, did not put it at an equal footing with slavery, which changes a human being from a subject to an ~~object of the state's law~~ *subject of the property laws. The direction of labor forces and the reasons*

as well as the conclusion, the contents and the dissolution of a labor contract, was in Germany too a matter for the state. The regulations fixing the working and living conditions of all workers, including the foreign compulsory ones, made, however, their existence uniform and by no means unworthy of human beings. Decent treatment was obligatory and ill-treatment prohibited. Thus, in this respect, too, the industry was in no position to make fundamental objections. In as far as the conditions were, especially with regard to the Eastern workers, temporarily different, they successfully tried to get them changed. For, within the framework of the planned economy, not only wages and working conditions, but also food supply, constructions and nearly every kind of consumption were regulated by the state up to the last detail.

My documents, which prove all this, also show that even the recruiting of voluntary foreign workers was controlled by the authorities a long time before the war. The ^{official} direction of the labor requirements was, from the beginning of the war, served also by current, specified reports about the strength of personnel from the hands of the enterprises (Betriebsführer) and detailed investigations by the authorities. The plants had, when they wanted to engage workers, to use an application form, which, according to its wording, was regarded at the same time as an application for a possible allocation of foreigners.

A great number of decrees prohibited, as a matter of principle, any discriminatory treatment of foreigners, but also their preferential treatment, which shows that the industry, because of its great shortage of labor, was inclined to favor the newly engaged foreigners in comparison with its old cadres of German workers. The graphs and tables submitted by me and other Defense counsels prove that the German food rations, which were ^{nearly} identical for both Germans and foreigners

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were quite adequate and throughout higher than those in force in Germany since the end of the war, and nobody who has observed the state of affairs without bias will have any doubt that the state of nutrition of these foreign workers was better than that of a great part of the German population at the present time, especially in the industrial areas. The same applies to the regulation for accommodation and to the way they were carried out, which throughout created living conditions not unworthy of human beings. May I only refer to the pictures presented and to the fact that, apart from day-rooms, sanitary installations, and other things, there was, even in 1942, a regulation in force, fixing a minimum living space of 7 cubic ms for each person in the sleeping quarters. No doubt, the bombing attacks had partly a very adverse effect on that. But this affected the German population to the same degree. With regard to the efforts of individual plants, as well as of the German Labor Front, to offer the foreigners a number of amusements also in their leisure hours by sports, theatre, and similar things, I refer to the documents submitted.

All this applies to the voluntary and involuntary workers from most of the European countries. A certainly regrettable exception in that respect was, at times, the Poles and particularly the workers from the Soviet Union, the so-called Eastern workers. The living conditions were made considerably less favorable by order of the German government, when, at the beginning of 1942, their employment began. With reference to the Bolshevik danger a most rigorous supervision and severe discipline were ordered. A major part of the wages which had to be paid by the plant to the amounts customary in the other cases, went to the Reich.

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In quality the food rations were worse, this could be explained by a lower living standard in the East. But in spite of this, living conditions were bearable for the Eastern workers in German plants as shown by just those documents which the Prosecuting authorities presented from secret documents of German authorities in Book 57.

Due to continued complaints, especially also by industry, to authorities in charge and at highest quarters, conditions improved gradually more and more until conditions of the Eastern workers corresponded on the whole to those of the other workers. Guard measures as well as permission to go out were ceased very soon. The ill famed barbed wire enclosure of the camps was also done away with at the same time. Special wage deductions gradual disappeared almost entirely and the rations of the Eastern workers were improved more and more. In this respect, as in general also, I point to my Closing Brief and the evidence mentioned there.

Objections were made by the Prosecution especially in regard to police measures taken against the local and foreign workers in the interest of the production potential. Reference is made in this case especially to the reporting and return of workers who had taken flight or did not return from their furlough and war, then transferred to^a correction or concentration camp, as the case demanded. It follows from documents presented by me, that in this respect higher agencies and officials of the regime demanded again and again in the most severe manner, by threat of punishment of plant managers and other competent authorities the report^{ing} of such workers, usually in the form of a report, in the interest of utmost production after war conditions became worse in 1942. There was practically no possibility of circumventing this entirely as has already been described here repeatedly.

In the thoroughly organized administrative machinery of Germany those particular foreigners were reported to the Police and Labor Offices, and besides, on account of their food rations and other allotments, at the Food and Economy Offices. In addition, almost everywhere they had to be reported there each month again for control purposes. The correctness of these reports was subject to heavy penalties, and those to the Labor Office even to the death penalty according to the law for the security of the German economy of March 1942. There and there fanatic adherents of the regime participated in all of these events. Added to this was the increased danger of sabotage, espionage and band activity due to the increased escapes, with all the consequences for the general public, the plant and its management, even though the German authorities did not publicly pay very much attention to it in order not to alarm the population, which was already quite apprehensive on account of the foreigners, even more. It was quite impossible for all of these reasons to conceal from the authorities that foreigners were missing for any length of time and to neglect to make the reports as ordered. Consideration must also be paid to the fact that, according to the documents submitted by me, tens of thousands of escaped foreigners were sent to the concentration camp plants for weeks by the SS every month anyhow in the last years of the war. But an escaped worker who was reported by a German plant according to regulations and on a report form ^{had the chance} of being released immediately after being caught or after serving short term and then being allocated again to the plant, where one was naturally considerably better off than in a concentration camp plant. The Court of Appeal in Frankfurt has, as I have proven, also legally and without objections by Military Government, rendered the decision that the passing on of such reports, which was impossible to avoid, is no crime against humanity.

But I refer thereby to the question of the responsibility of German business, and especially that of the individual industrialist, for the consequences of the National Socialist forced labor program in themselves.

The anti-slave labor agreement already mentioned by Professor Wahl in Paragraph 5 Section 3 made the central authorities of a country responsible for the use of forced labor and for compulsory labor service. This corresponds also to the principles of constitutional and international law. This defines in principle only the rights and duties between States. The normal citizen, i.e., the civil servant and the soldier, as well as the private citizen, has to obey his State alone. This is the so-called primacy of State Law before International Law prevalent on the European continent and also not alien to Anglo Saxon jurisprudence. British, yes and even American court practice, as shown by me in an important instance, follows the law of its country even when it cannot be brought into accord with International Law. For British ^{opinions} even decisions of the executive branch are binding in International Law, hence the decision rendered a short while ago, ^{concerning} Enchevmeister x), by the British government, according to which there is still a state of war existing between Germany and England. It is also perfectly clear without any doubt that such far reaching measures and decisions have to be reached in a uniform manner and that the responsibility for this had to be restricted to the political authorities. This principle also found its expression in the proceedings before the IMT, as the statements made by the French prosecutor and in the verdict itself. It may be pointed out that Hermann

x) Monthly for German Law 1947, Page 179

Schenk and Speer, despite the fact that they held leading positions under Counts I and II of the Indictment - Preparation and Conduct of an Aggressive war - were not guilty, and others, despite their close association to the National Socialist policy, were acquitted. Even Schirach, who as Gauleiter was responsible for all questions of labor allocation in his Gau from April 1942 on, according to Schenk's orders, was nevertheless not sentenced for war crimes on Count III of the Indictment, according to the reasoning of the IMT, in regard to the employment of foreign deported workers, but for other reasons, namely for crimes against humanity according to Count IV of the Indictment.

But while public opinion of the whole world demanded conviction of the leading men of the National Socialist regime and they themselves to a large measure also expected this, as the sentence in the justice case based on the *ex facto* principle discusses, it is an entirely different matter with the private business men and his connection with the National Socialist forced labor program. As I have already stressed in my Opening Plea, millions of industrialists, tradesmen and farmers in Germany, as well as neutral foreigners residing here, have employed foreign forced laborers and have been forced to do so. The multitude of illiterates - if I may call them so - among them had, even if they sometimes were sorry for those workers, no scruples at all in view of this compulsory labor service which applied in equal measure to native and foreign labor. But leading business men, including those of neutral concerns in Germany had, despite their scruples, no possibility of opposing this government program. For this purpose they did not have the necessary legal and political power and an insufficient knowledge of conditions to enable them to judge the manifold and - as I believe to have proved most conclusively - most complicated legal problems.

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In any case, no plant manager and farmer has ever thought that he was committing a crime if he treated the foreign laborers, who had been allocated to him within the framework of the forced labor program, decently. Such an attitude is even today still prevalent, with the assent of the occupying powers, as the enforcement of the denazification shows. For the millions including some in leading positions, who employed forced labor are at liberty and - in part in responsible positions - also active again. But then it is contrary to the principle of justice and the uniform application of legal principles, demanded in the IMT, to sentence individual industrialists as war criminals who are in the same position.

All this brings us to the conclusion that for the National Socialist forced labor program in foreign countries, only the political leaders are principally responsible under International and Penal Law, while the private industrialist and farmer can only be punished if he made himself personally liable to punishment by committing a special war crime or crime against humanity within his sphere of responsibility.

This conclusion was also reached in the sentence of the Flick Case, substantiated by the fact that the individual industrialist was unable to evade this government program and that he found himself in this respect under duress. In that trial, and also before this court, many witnesses from the most different sources and with different attitudes have testified that the refusal in itself to employ allocated foreign workers would probably have brought on the most serious consequences. This is already obvious to anyone who was acquainted with the methods of the National Socialist regime and must be especially valid if the refusal to do so came from a large enterprise.

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which was important to war production and in need of many workers. For that case such a refusal to employ foreigners meant that the plant, could not fill its important war production quotas, since generally German workers were also insufficiently available. And this certainly would have been reported to one of the chief government officials under such circumstances, who then would have been even more angered by such an action because the regime had for propaganda reasons only very reluctantly, unwillingly and under the pressure of war conditions decided to take these compulsory measures in most of the countries, and naturally was very much aware of the disadvantages - primarily the growing bitterness in the respective countries - just as shown by many of the Prosecution documents of Volume 87. But after the men in leading government positions had overruled all these important political considerations for military reasons, they would have reacted just that much more violently, in keeping with their nature, to such a rebuff from private industry.

A refusal to employ foreign labor was, in addition, quite impossible, especially in industry, for the following reasons:

Industrial production had been administered since the beginning of the war by government orders. When the war situation became acute around the turn of the year 1941/42, that is at the time now under consideration, the entire German economy under the leadership of the competent Ministries became subject to a system of Headquarter Staffs which, as shown already by the text of its directives and orders submitted by me, managed private industry in an absolutely military manner too.

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The Betriebsführer had to comply with these decrees and orders in all questions of production and working potential and any failure to do so and any serious act of opposition was, as various witnesses testified, subject to the severest penalties. If under these circumstances a Betriebsführer had not obeyed his orders because he had refused the foreign workers assigned to him and thereby necessarily had a shortage of men, then in all probability according to law he would possibly have been punished with death for treason and giving aid and comfort to the enemy, if he had not already lost his freedom and position before for these reasons. I might only recall that according to the documents submitted by me in Vol. VI even the old Imperial Military Tribunal in the First World War had treated similar occurrences involving the war economy at that time, such as strikes, usury and the destruction of harvests, as treason and giving aid and comfort to the enemy, and I also believe that such a view is not foreign to Anglo-Saxon legal thought, either. The life and freedom of anyone who so placed himself in opposition to the regime in such fundamental questions, therefore, were directly threatened by the police and criminal justice. Examples of a similar kind could be mentioned, in connection with which one must bear in mind that the actions of the Gestapo and the judgments of the high political non-military courts of National Socialist Germany were secret and only became known by chance. To this must be added the fact that in view of the general state of affairs and legal situation, which I described at the beginning of my Final Plea, hardly anybody saw any possibility of offering successful resistance, so that in plants which were of importance to the war effort, at least, nobody probably ever went so far as to refuse to obey such an order. However, this does not alter the fact of the direct threat to any opposition. It is the nature of such a general coercion exerted by the State, now frequently called collective coercion,

that in the individual case it cannot be proved that there is any threat against the individual, because it is omnipresent. This nature of collective coercion as a paramount factor has also been recognized by the American Military Government. Thus its law on the return of property belonging to persons who have been racially and politically persecuted in Germany also envisages such coercion in cases where the injured parties, like most, disposed of such property solely under the impression of racial and political propaganda without any really direct threat to their persons.

The assumption, especially common abroad, that the wealth and power of German private industry would have provided the possibility of opposition in questions of a fundamental nature fails to recognize the nature of National Socialism and has been refuted by the evidence submitted during this trial. The testimony of men in such high authority as the witnesses Lammere and Austl and the documents submitted by the Defense on the control of German industry under the National Socialist regime show that even before the beginning of the war and much more so afterwards the position of the capitalist was so undermined by the official measures controlling the entire economy and by the terror of the Party and the Gestapo that his position became similar to that of a civil servant. As against the holders of political power wealth and income meant very little in National Socialist Germany, indeed even a special danger. In the document submitted by me in Volume VII, therefore, Professor Koepke speaks rightly of an undermining of property, a disguised expropriation of private industry. When fundamental questions of National Socialism were concerned even great special abilities did not protect one from threats and the loss of one's livelihood, as is shown by the fate of Jewish and non-Jewish Nobel Prize winners described by the witness Kneding. The circumstance that

It was once possible to help out or prevent harsh measures in individual cases does not alter the fact that during the war years, at any event, an opposition on general principles to the holders of power in the National Socialist regime in fundamental questions was practically speaking not possible. Thus, indeed, even the International Military Tribunal states:

"Hostile criticism, indeed any criticism of any kind, was forbidden and the heaviest penalties were imposed on those who were active in this way. Any independent judgment, based on freedom of thought, thereby became a complete impossibility." x)

Thus the industrialist was left with no other course than to obey if he did not want to expose the livelihood or lives of himself, his family and possibly his employees to the greatest danger. But as can be seen from the judgment in the Flick case one could not and can not legally demand this from a private business man or industrialist. The same conclusion is reached in the actual practice of dehumanization and in the wise reasoning of the moral theologian, Father Fribil, in the expert opinion I requested of him. In view of the highly organized methods of terrorism practiced by the Nazi regime any successful resistance was hopeless, as the 20 July incident proved even in the case of the armed forces. But to sacrifice oneself would have been to no avail, for a successor of the victim drawn from the ranks of active National Socialists would have met the requirements of the government and employed the forced workers, quite apart from the fact that they would probably have been worse off under his management than under the old one.

As the Flick judgment emphasizes, the rule of the Control Council Law on the significance of orders is likewise not opposed to the confirmation of necessity as a legal excuse, for here it is not a question of an order to commit an individual crime, which does not

x) Page 12 of the official English edition of 1947.

exonerate the hesitating criminal in German law either, but rather of an entire system of legal, moral and factual necessities, against which the average citizen was powerless and not in a position to make a choice in the sense of the moral law, according to the words of the I&F which were once quoted here by me. Father Pribilla's expert opinion confirms this legal state of necessity even under the moral aspects of the doctrines of theology and philosophy. In this connection Father Pribilla rightly emphasizes that precisely in Germany, even from the ethical point of view it was especially difficult to justify any resistance to the power of the State, because for about 3 centuries an authoritarian state government was supported here to a particular degree by the ecclesiastical and philosophical party. The historical reasons for this are to be found both in Germany's perilous geopolitical situation and in its special ecclesiastical development. For the princes and sovereigns who were the adherents of Lutheranism and aided it to victory became the papa episcopus, that is to say the supreme head of their national church, and in the Peace of Westphalia by the maxim "quibus regio eius religio", the European powers constituted the German sovereigns lords of their territory in matters of faith as well. The exclusion of tensions, even of political tensions, implied in this made possible that tranquility, order and discipline within the individual states which enabled great things to be accomplished and probably also conditioned the character and brilliance of the period of classic German culture. Then as a result of this attitude the well-known constitutional law scholar Welsendorff legally denied the right of any resistance to the power of the State in his work published in 1916, excerpts of which were quoted by me in Book VII - probably the latest authoritative German publication in this field. Thus during the last decade in Germany this once famous, although to be sure always problematical, ius resistendi

had become almost unknown to the practical lawyer and the educated man in general, a circumstance which certainly favored the tragic developments of the last decade. It provides an example for the saying of a famous Frenchman that the greatest virtues of a system are its greatest vices. At the same time this teaches one not to forget the sunny side in the darkest hour.

In this connection, however, other old and weighty opinions outside of Germany might be mentioned with reference to such a right of resistance on the part of individuals - in accordance with the maxim "Quod universitas debet, singuli non debent" - "What is owed by the whole is not owed by individuals", that of a nation or a majority is subject to other criteria again and is without any significance for the problem of guilt in criminal law, that is, individual guilt. According to the document in Book VII which I have just mentioned, "Bartholomaeus of Padua speaking for the Catholic doctrine of the Middle Ages, as well as Calvin in his Institutes, emphasize that resistance against the power of the State is permissible only to the statutes ad hoc or the magistratus, that is to say, those who have been specially charged with public and legal authority. Grotius, however, forbids the private individual to rebel in any way against the holder and even the usurper of the supreme power; x) The special responsibility of the man at the head of the State and the duty of obedience of the citizen and private individual as against even the unjust exercise of the power of the State is, therefore, an old legal principle which is also followed by the Flick judgment in its conclusion and not a hypothesis erected for this trial.

I hereby conclude my basic treatment of the forced labor question and turn to the question of a personal responsibility on Dr. Schneider's part.

The Indictment is also directed against him under Count 1 for the preparation and waging of a war of aggression.

x) Hugo Grotius: "De iure belli ac pacis", Leyden, by Brill 1988, page 161 XIX and page 163 XX.

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In this respect I refer in the main points to the statements of my colleagues, the defense counsels, and to my Closing Brief. With regard to the first grievance pertaining to this count, the financial support of Hitler by the I.G. from February 1933 onwards and the foundation of the Vermittlungsstelle W by the Central Committee in 1935, I should like to mention that before the end of 1935 Schneider belonged neither to the Central Committee nor to the Working Committee which was formerly in charge of such matters, as a permanent member. Consequently part of the gifts did not come to his knowledge at all, and part only after the event, as he also testified during his interrogation before this High Tribunal. The evidence has also shown that the Vermittlungsstelle W, according to its name, was nothing but an office in charge of the correspondence of the I.G. with the Armed Forces in the interest of a better or ill-will, which proved necessary in consequence of the re-armament which was at that time directed by Schacht, as is known. His co-operation with the leading gentlemen of the I.G., especially also with the heads of the Sparten - a position likewise held by Schneider since 1938 only - was very loose. It cannot be understood either how these almost insignificant actions could have served the preparation of a war of aggression. The same applies to the other so-called co-operation of the I.G. with the Armed Forces. Secrecy regulations and economic mobilization plans of the authorities for industrial production exist more or less in almost all countries and they are complied with everywhere as a matter of course. Air raid protection measures belong to any reasonable preparation for defense and have nothing to do with the planning of a war of aggression, as a matter of principle. This also applies to the so-called map exercises for the protection against air raids, as for instance made at Louvain. It is not true that the I.G. participated in maneuvers in a military sense and that is why it could not be proved.

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The Four Year Plan was a measure taken by the State and its planning was in the main kept secret and was unknown to Schneider. He did not hold any honorary function with the General Plenipotentiary Chemistry, as was shown by the evidence, and consequently he was not connected with the Four Year Plan.

The Prosecution is of the opinion that the production of the I.G. must have given to its leading men a special knowledge of Hitler's intentions of aggression. This ^{charge} is opposed in each case by these gentlemen who were mainly responsible for the respective branches of production of the I.G. Since Schneider was head of Sparte I since 1936 and already the leader of its largest plant before this time, and had handled part of its tasks since 1936 for Krumpholtz, I shall discuss these affairs briefly insofar as they were connected with the production of Sparte I. As Schneider explained when he was interrogated, this production, especially in the field of nitrogen, mineral oil and methanol, was of course of importance in the case of war. But it is incorrect that the development of this production until 1936 did not result from peace time requirements, above all from home consumption and export in connection with the foreign exchange situation, the employment program and the regular re-armament, and must have induced and did induce Schneider to infer the German government's intentions of aggression from this.

The diagram in table 1 of Schneider Exhibit 13 in his Document Book VIII shows that the major part of I.G.'s nitrogen production for home consumption and export was used as fertilizer in agriculture, and only a small part of technical nitrogen for military purposes. If, according to the documents of the Prosecution, the consumption of technical nitrogen, i.e. nitric acid, increased in 1937 for a short

time, Schneider Exhibit 14 shows an immediate set back for 1938, so that in this regard, too, there was no motive for special political conjectures.

According to the diagram attached to Schneider Exhibit No. 15, only a very insignificant part of the pre-war methanol production was used for military purposes, i.e. the explosives Hexogen and Nitropenta. But this was unknown to Schneider, since Louma delivered the methanol to plants of Sparte II for the manufacture of formaldehyde and only part of this was made available for the explosives industry. Only during the war was methanol used for tetanol.

The question^a pertaining to the production of mineral oil will primarily be dealt with by the counsel for the defense of Dr. Baetefisch. I shall comment here only in short on the general trend of the production before the war. As the diagram on table 2 of the aforementioned Exhibit 13 shows, the increase in the I.G.'s production of synthetic fuel before the war was relatively small and the production in 1938 amounted to no more than 6% of Germany's total petroleum consumption. In consideration of Germany's motorization, which had remained far behind requirements but had been promoted, as set forth in Kirsch Exhibit 4 in the latter's Document Book I, it can be seen that the I.G.'s production of synthetic fuel was completely justified by petroleum requirements and the economizing of foreign exchange, which was so necessary.

This argument, which is conclusive on account of its very simplicity, proves that it was by no means possible to infer any aggressive intentions of the German government from the production of Sparte I. As far as the other branches of production of the I.G. are concerned, about which Dr. Schneider was only generally informed, my colleagues of the defense staff will comment on the respective

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evidence. They will arrive at the same result.

All this also applies to the plants which were erected by order and with the support or for the account of authorities and/or the Wifo (Economic Research Company), for products of the kind of those of Sparte I, which in their peacetime quantities were necessary for a defensive re-armament and are also not unknown in other countries, as the witness Dickmann has confirmed. I should like to add that according to the documents submitted by me such a nitric acid plant was also erected in England in 1937, for instance, with the assistance of the I.G., which speaks for itself. For details in this respect I refer to my Closing Brief. The question of piling up of reserves is likewise dealt with there. I should only like to emphasize that the I.G., as was proved, did not stock up gasoline for the case of war and that the stockpiling which was known to Schneider was absolutely justified by peacetime requirements. The weakening of possible enemies of Germany by means of international agreements will be dealt with by my colleagues on the defense staff, on behalf of the gentlemen who were informed about this. I refer to this and to my Closing Brief, which also deals with the alleged remark "That is the war" made by Schneider at the beginning of the war and which is, in my opinion, so irrelevant.

His powers as a member of the Vorstand, of the Central Committee, and of the Technical Committee, and as head of a Sparte, will also be dealt with basically by my colleagues, so that I think I might have repetitions in this respect. I shall comment subsequently on Schneider's position of Hauptbetriebsführer.

After all this it cannot be said that Schneider did or could infer intentions of aggression of the German government from his knowledge of the production of the I.G., or of its other business policy. I may be allowed to stress, in this connection, that Funk, who was Reich Minister

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of Economics after 1938 and therefore had a much better knowledge of Germany's industrial planning and preparation for the war, was admitted^U by the I.E. of the charge of preparation for a war of aggression. It shall not be omitted to mention that the same applies to the knowledge held^{by} high civil servants and officers who were interrogated in this trial as free witnesses, as applies to Funk. Finally it must not be omitted that nobody in Germany, except perhaps the most intimate collaborators, would have been allowed to tell Hitler that he was planning a war of aggression. This was also confirmed by the witness Schmidt during his interrogation last autumn. How, then, could it have been done by the defendants whose plants mainly produced things which after the 1st World War had to be recognized by the victorious allied nations as being necessary for the peace, as was confirmed by the witness Morgan.

The official positions which Schneider had to assume in his capacity as Hauptbetriebsführer or as head of the Loury-Werk, likewise did not give him knowledge of the political intentions of the German government. The positions he held with central agencies in Berlin were of a purely social nature, the others were local ones and likewise gave no insight into the plans and measures of the high political^{leaders}, in view of the centralistic character of the National Socialist regime. It was confirmed by the evidence produced that the appointment to Military Economy Leader (Wehrwirtschaftsführer) was only nominal.

During the war Schneider was obliged to do his duty, as was any German. This also applies to his position of Chief Counter-Intelligence Officer which, for the most, was more of an authoritative and supervisory, and not of active^{an} nature, and which he took over most unwillingly, as is confirmed by an affidavit by Dickmann. Even the documents of the Prosecution prove, besides, that the I.G.'s attitude in this respect was rather passive.

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An outright refusal was not possible and would have been inconceivable to everyone, as it is best shown by the fact that Schneider's appointment was effected by Admiral Canaris who had always been opposed to National Socialism for which he paid with his life. Apart from that, not only the passive counter-intelligence but also an active intelligence service is permitted by international law for which I was able to furnish proof also on the basis of American regulations. Schneider had to meet the demands of the government during the war in regard to these questions as well as those of production. This was the duty of every soldier or citizen. Furthermore it was expressed in the judgment of the Justice-Case that all defendants for this reason had been found not guilty of promoting a war of aggression. Even men like Sauckel, Bormann, and Speer have been acquitted on this count by the International Military Tribunal, as previously mentioned, which has confined the criminal responsibility in this respect to the supreme authorities responsible for the conduct of the war.

In view of the fact that the Prosecution, in its preliminary memorandum and in cross-examination, brings Schneider's abovementioned position as Chief Security Officer into connection with Count IV of the Indictment, I shall now deal with this point. Schneider has been charged by the Prosecution on this count too, because he was a sponsoring member of the SD and later on claimed that this membership was connected with his activity as counter-intelligence officer. In the meantime it was established by the judgment in Case 3 that sponsoring members could not be regarded as members of the criminal organizations. But the IAT had already acquitted the members of the counter-intelligence service, who in the same way as the counter-intelligence officers had been incorporated into the SD, of having belonged to these criminal organizations. For this connection was ordered by the authorities and therefore was compulsory, a connection which the persons concerned attempted to evade as far as possible, as the evidence in this trial has also established in the case of Schneider.

Therefore the Prosecution's attitude is no longer conceivable. Schneider's appointment to Chief Security Officer, according to the results of the evidence, had nothing to do with his sponsoring membership and was effected in view of his position as general plant manager. It is also a known fact that the military counter-intelligence service was one of the few real political resistance groups in the Third Reich. I only mention the fate of Admiral Canaris and his staff and also that of the counter intelligence officer of Leuna, Dr. Schaumburg. Schneider's appointment to general plant manager, contrary to the allegations of the Prosecution, was not effected because of his sponsoring membership but for other reasons, especially because of his interests in social affairs. Actually Schneider had no connections with the SA other than making his contributions as a sponsor and, above all during the war, there was a constant tension and disagreement in his relationship with its most powerful organizations, the SA and the Gestapo. All this was established by the evidence. However, this is no longer of importance since it has been established by the judgments of the IAF and the Justice-Court that Schneider did not belong to one of the criminal organizations, either as a sponsoring member or as counter-intelligence officer.

Schneider's personal field of work, according to his testimony, was not connected with the matters dealt with in Count II of the Indictment and in view of his own task he could not concern himself therewith. Such a decentralization of tasks is necessary in a large enterprise for the sake of the matter and it is absolutely admissible from the legal point of view. He was confident and had reason to be confident that those matters would be correctly dealt with by the highly qualified officials and experts of the IG who had been carefully selected. An examination of those difficult legal and commercial problems was entirely beyond his technical assignment.

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According to the principle of personal guilt, recognized by these Tribunals, and according to the corresponding interpretation of the Control Council Law, he cannot therefore be held responsible on these charges. To this effect I refer to the fundamental statements by my Assistant Defense Counsels in regard to the question of the responsibility of the Vorstand.

Count III of the Indictment, on the other hand, especially refers to Schneider in regard to the principal question of forced labor, above all in his capacity as Hauptbetriebsführer of the IG. After having dealt in detail with the fundamental part of this problem, I now like to describe primarily the position of Schneider as Hauptbetriebsführer or, as the law puts it, head of the IG enterprise. Schneider, according to the Prosecution's point of view, was in so far responsible by setting the course for all questions of labor, as is demonstrated by the evidence submitted by the Prosecution as well as by the Defense, this is not correct according to the law. If in his affidavits which he generally did not formulate himself, Schneider has made similar statements which are evidently incorrect, it is because of the fact that he, as a non-jurist, after hours of nightly interrogations and owing to the lack of sufficient records, was in no position to describe the circumstances as they were. In regard to the particulars of these interrogations I refer to Schneider's testimony before the High Tribunal where he was given the opportunity to correct his errors.

According to the law for the regulation of national labor which is primarily decisive here, the local Betriebsführer, who was connected with the plant and familiar with its conditions, was in the first place responsible for questions concerning the employees. Since this is the best basis for a responsibility, the regulation established by law can therefore be regarded as absolutely sound.

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The industrialist, in other words the owner or, in the case of a legal person, the legal representative which is the Vorstand in the case of a corporation, were usually in charge of the plant. However, if he did not run the plant himself he had to appoint someone else as manager of the plant. The responsibility of the industrialist in such a case, which also is confirmed in the documents of the Prosecution, was only in an indirect form for the selection of the Betriebsführer and to decide whether he was to continue his assignment. In so far I refer to the extracts from commentaries pertinent to the law for the regulation of national labor and to the affidavit by Mansfeld, the creator of said law, contained in volume 67 of the Indictment. If the enterprise was composed of several plants a leader of the enterprise could and, if necessary, had to be appointed. The latter, with reference to the so-called Senior Shop Steward of the German Labor Front, was frequently called Hauptbetriebsführer which was also the case in the IG prior to the appointment of Schneider already. As a matter of principle, he was acting, as the representative of the industrialist, consequently he was only indirectly responsible for the plants which he did not manage himself. The right of the Hauptbetriebsführer to issue general directives, as mentioned by the Prosecution, was restricted, according to the wording and meaning of the law for the regulation of national labor and its implementation, to the social matters of the employees involving several plants, in as far as he had reserved this right for himself. Consequently, the Hauptbetriebsführer himself defined his competency in this respect.

All this is the result of the documents submitted by me and the statements by the witness Weiss. Prior and during the time already in which Schneider held this position it had become a practice in the I.G. that the Hauptbetriebsführer issued directives in so far as the social policy directed by the IG was concerned, which for example included the building of apartment houses, special welfare contribution of the enterprise itself etc.

The Hauptbetriebsfuehrer was only active as a coordinator in the social welfare policy of the State, as well as in social security, salary matters and working conditions and the allocation of labor, and in war time, for example, in the matters concerning the quartering and feeding in the camps. This meant a certain coordination of the measures taken in the 50 odd I.G. plants through an exchange of experiences etc, which was accomplished at the meetings of the Board of the enterprise, of the Technical Committee, by the so-called conferences of the Betriebsfuehrer, as well as through the statistics of Bertram's Office and Schneider's trips to the individual plants. This practice of the I.G. is explained very easily as a necessary result of prevailing conditions, since general questions of the social welfare policy of the State were only decided by the central authorities and regional and technical differences between the different plants were clarified and decided by the middle and lower agencies of the State, as for instance the Labor Offices. Whatever was left over in this sphere for the I.G. to decide was on a local and personal level and therefore could not be judged and decided by the Hauptbetriebsfuehrer, but only by the local Betriebsfuehrer; this also corresponded to the meaning of the law and the traditional decentralized centralization of the I.G. In so far as he learned of abuses, Schneider could and had to intervene in individual instances, which he also did. Naturally, a Hauptbetriebsfuehrer had to have other tasks besides his social welfare activities, to correspond to his leading position as defined by the law, and so Schneider was also a member of the Vorstand and a committee member, as well as the

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head of a Sparte. This, however, did not change and increase his legal social responsibility over what he already had as an entrepreneur or a Hauptbetriebsführer, because he was only a member of the Vorstand insofar as he represented the entrepreneur in a corporation and therefore was only indirectly responsible within the above described boundaries.

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The selection of the Betriebsfuehrer, which was so important and was always done carefully, was a task of the Vorstand in the I.G., as it no doubt is in all large enterprises. For a Betriebsfuehrer to be suited for the conduct of his plant according to the law not only from the view point of social welfare, but also from a human and technical point of view. I hope that I have shown here, through the evidence, the character as well as the limits of the authority held by Schneider as Hauptbetriebsfuehrer of the I.G.. For the details I refer you to my closing brief and the documents mentioned therein.

As the evidence presented by the Prosecution and the Defense has shown, the I.G. could not fill the official production quotas imposed upon it during the war on account of the steadily increasing conscription of German labor into the Wehrmacht, without obtaining such labor from other countries, although the employment of foreign workers by the I.G. caused many grave doubts for a variety of reasons. For this reason the I.G. participated voluntarily in the recruiting of the foreign workers, with the consent and under the control of the authorities and according to the existing regulations. As has already been described, the German authorities had turned since 1942 to large scale conscription of foreign workers, as a result of the difficult war situation. It has not been proven that the I.G. employed foreign conscripts before 1942. This could only have involved Poles, and the documents presented by the Prosecution only prove that Poles were allocated in large groups to the I.G. after 1940, through government agencies and under their control, just as had been the case with voluntary Polish workers for other firms before the war.

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The fact which is self evident in the regulations and even obvious in the Prosecution documents, namely that the allocation and the working and living conditions of these Polish workers were decided and regulated by the authorities, does not prove that forced labor was involved. At any rate, Schneider did not know of this. Here it must not be forgotten that, as the witness Stoehfang has testified, the use of compulsion was kept as secret as possible by the authorities and difficulties of language and making oneself understood made it harder to find out about this in individual cases. It is also obvious, according to the documents, that no I.G. employee connected with these matters went to Poland at that time.

During 1942, at the time when labor became increasingly scarce, the I.G. was also given compulsory workers. Since they, like most of the volunteers, came through official agencies, this only became known gradually. In consideration of the conditions described earlier, however, the I.G., just like the entire German economy, saw no way of evading this practice of the government. The prescribed production quotas could not have been fulfilled otherwise, as is also shown by many of the Prosecution documents. Naturally, these questions were discussed by the accused Betriebsfuehrers. But when the Prosecution points to the absence of decisions made by the Vorstand or to like things, it forgets that one can only make decisions on things over which one may make decisions. But this was particularly not possible at this time on such basic questions as the allocation of workers.

Employees of the I.G. did not participate as members of the firm in the compulsory labor service and slave measures of the government.

They only served the authorities in an advisory capacity in order to ensure the practical allocation of the conscripted workers to the correct plants according to their abilities. But this was not only for the benefit of the plant, itself, but above all in the interest of the workers themselves. The Prosecution documents in book 67, in particular, show that the incorrect distribution and assignment of the workers from other countries was counted as one of the great deficiencies of the forced labor program. Therefore no one can be legally blamed, nor even morally blamed, for giving such advice. It is surely not wrong to make an effort to find a better solution for those affected by a system that in itself is to be condemned. Even the concentration camp inmates who administered the camps for the SS, and in doing this served for the benefit of their co-prisoners, are rightly given special recognition. I am only recalling Herr Kogon to mind, who wrote that well known book and often appeared here as an expert witness for the Prosecution. In my opinion the entire wealth of evidence presented has shown that the I.G. has made an effort, in the spirit of its great, well proven and authenticated tradition of social welfare, to make the living conditions of the foreign workers as favorable as possible. In this connection I am referring especially to the affidavits made by foreigners which the Defense was able to furnish, although they could not, unlike the Prosecution, travel in foreign countries, and encountered there a great reserve due to the fear of a charge of collaboration. The long Swiss affidavit in my document Book VIII shows that in 1943, the last year for which such information was available in reliable form and when a great many foreign workers were already employed by the I.G., the disbursements for social

welfare purposes had, while Schneider was in charge, more than tripled since the prewar days, and amounted to 41 millions for living quarters alone.

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As the witnesses have stated, the I.G. and especially Schneider, always and consistently made efforts, which were successful, to improve the conditions for the Eastern workers. I could only like to refer to the clear description of the senior foreman Peantek of how the appearance of the Eastern women workers became more and more similar to that of their Western women coworkers. Naturally, the I.G. was also powerless against the consequences of the bombing attacks, which hit Germans just as it did foreigners and which the German government, in the early belief of its ostensible air superiority, did not consequently prevent. Nevertheless Schneider did everything here, according to the statements of witnesses, to alleviate the deficiencies, although the scarcity of all supplies made this very difficult.

I do not desire to burden this plea with the constant efforts of the I.G. for the improvement of the meals, quarters, granting of leaves and medical care of the foreign workers, as well as the use of their spare time for sports, amusements, theaters etc.. For these things I refer to the closing briefs which have been handed in by the Defense and the proof contained therein, which also describe the efforts to ameliorate the effects of the official regulations which had been issued for taking excessive leave and for other offenses by foreign workers. Children of families which had fled from the East were only employed during the last phase of the war in small numbers and according to the legal provisions. It happened from 12 years of age up, for light work with shortened working hours, just as it had always been possible in Germany, and surely also in other countries.

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In this connection the favorable hygienic conditions prevailing in the chemical industry, especially in the I.G., must not be forgotten. If there actually was a case that a somewhat younger child had been inadvertently employed in a plant of the large IG enterprise, this cannot be ascribed in any case to the persons in charge and is certainly not a crime against humanity. It is also obvious that an enterprise like the IG has no interest of its own to employ children. This only happened in order to keep them from loitering on the streets and its harmful consequences. The evidence has shown that the plants of the IG, in spite of a shortage of space in all rooms and a shortage of equipment, have set up schools and kindergartens. In my Closing Brief I have given the reasons which caused Schneider in his affidavit to give too low a figure for the age of the children.

The employment of prisoners of war was effected by the Wehrmacht as it is shown in the documents of the Defense and the judgement in the Flick trial. According to the documents submitted by my colleague Butcher and according to the prevailing theory of international law, most production branches of the IG are of a kind that permits the employment of prisoners of war. For the plants of the IG predominantly produced semi-finished products which not even partly served military purposes, either directly or indirectly. In as far, however, as according to the prevailing theory the admissibility of the employment of prisoners of war in several plants of the IG could be called doubtful, it was, as a matter of principle, prohibited, according to the German regulations, that foreigners and prisoners of war were employed in these plants, because of their secret character. In this connection Schneider was not informed of any violations of international law.

The prisoners from concentration camps, too, had been allocated to the IG on authoritative orders so that, according to the entire factual and legal situation,

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there was practically no possibility, either to oppose or to decide about the matter on principle, as it was also recognized in the Flick judgement. Only under especially favorable circumstances and in individual cases was it possible for the IG to evade these measures. Apart from that, the defendants were right in believing that the prisoners who worked in the industry were better off than those in the camps. The correctness of this conception is confirmed by the documents submitted by me. Beyond that, it is not conclusive that an arrest without summons by court constitutes a criminal act in times of war. For reasons of state security it is probably known all over the world. The justification of this conception was recognized by the German Supreme Court as early as 1921. That the prisoners were compelled to work during the last war does not in any way change this fact. The obligation for work also existed for all free persons and, according to Article 5, paragraph 1, of the Anti-Slavery Agreement, forced labor for public purposes is permitted even without compensation. The prisoners, however, worked on buildings important for the conduct of the war or on other projects of this kind for the benefit of the Reich, to which the IG and the other enterprises had to pay an absolutely adequate compensation. On the other hand the industry, due to the prevailing secrecy regulations in regard to concentration camps, obviously had no knowledge of the percentage given to the prisoners in addition to the bonuses which the prisoners received from the industry. It must be furthermore mentioned that the prisoners only comprised 2 1/2% of all the IG employees, as it was confirmed by the witness Weiss.

The entire picture of the evidence produced by the Defense has shown that, as far as conditions permitted, the IG has done everything in its power during the war to make the living and working conditions for all their employees, especially those of the foreigners and prisoners, as pleasant as possible.

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This also applies especially to Dr. Schneider, as is confirmed by the documents and the testimony of the witnesses. He has also attempted to ease the sufferings resulting from the air-war as much as this was in his power. He cannot be charged with individual crimes which do not constitute crimes against humanity, as was repeatedly emphasized by the Prosecution also.

All this applies especially to Leuna in accordance with Schneider's obligation as the manager of this plant. Here too, I would like to refrain from going into details in regard to questions dealt with in my Closing Brief and ¹⁴⁸refer to the records and my documents. However, at this point, I ¹⁴⁹like to point especially to the statements given by foreigners employed in Leuna which I have submitted and part of which have even been certified by the American Military Government, a fact which refutes more than anything else the suspicion of collaboration expressed by the Prosecution. The submitted photographs speak for themselves. These documents furnish the best proof for the successful endeavors in Leuna to make the living conditions of the foreigners as favorable as possible in regard to the hygienic conditions and in every other respect.

According to the testimony of the witnesses, the reporting of foreigners to the Gestapo was generally avoided in Leuna as far as this was possible. This, of course, was especially difficult in cases where foreigners had escaped or had not returned from leave. After the spring of 1944, following the first terrible air-raids on Leuna, the number of these cases increased, which is easily understandable. However, if one realizes that, according to the submitted contemporary documents from the war, an average of 30 to 40 000 escaped foreign workers and prisoners of war were sent by the SS in the summer of 1944 to the SS projects camps alone, in other words, the concentration camps, and that, according to the testimony of the witness Stothfang,

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the number of employed foreigners during the war amounted to 8 million, it is certainly not an excessive number if 20 persons a month were reported in Leuna since the plant, according to the documents of the Prosecution, had about 12 000 foreigners employed. In addition to that, it is a fact that the persons reported by such plants as Leuna were generally not sent to the concentration camps when apprehended, but could resume their work in the plant after a light punishment.

No committee from the International Red Cross or from the Protective Power has ever objected to the employment of prisoners of war which was ordered and regulated by the German authorities for several production branches of this largest plant in Middle Germany. It also conformed with the recognized rules of international law which are evident in the documents books presented by Dr. Baettcher. Otherwise the Prosecution would have certainly been able to present reports to this effect by the International Red Cross or the Protective Power, as it was done in the Flick trial by Dr. Kranzbushler who procured this material as counter-evidence.

Due to the pressure by the Gestapo, Dr. Schneider was compelled to decide to the establishment of the Leuna reform camp, all the more because of the fact that he and his plant had great difficulties with the Gestapo at that time, as the evidence has shown. The prisoners obviously were under the control of the SS, when fatalities occurred among these prisoners, Schneider and his assistants, in spite of opposition by the camp administration and the risk involved therein, succeeded with great efforts in establishing the cause beyond any doubts - insufficient food in the camp controlled by the SS - and made arrangements that these conditions were corrected.

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Then, the accidents ceased. That the reformatory camps were different from the concentration camps, has been proved by me. The prisoners of the reformatory camps were detained for the most various reasons and as a rule released after a few weeks.

Thus, Schneider has not become guilty within the meaning of the indictment either in his capacity as Betriebsführer of Leuna. It should also be mentioned that after the American occupation in 1945 Schneider was confirmed by the American Military Government as the manager of the biggest works of Central Germany and vice-president of the Halle chamber of commerce. This would surely not have been done if the conditions prevailing at Leuna for foreigners had been unworthy of human beings, which, incidentally the prosecution has completely failed to prove.

Twice Schneider visited the Auschwitz plant. On those occasions the impressions he received were, considering the war time conditions, not unfavorable. This is quite understandable according to the results of the evidence taken, since even prosecution witnesses confirmed such an impression. Although what he could observe of the state of nutrition of the prisoners was not homogenous, he knew that the IG, was making continuous and successful efforts to improve working and living conditions, especially the nutrition of the prisoners. According to all that has come to light about the reputation and the achievements of the plant manager Darrfeld in the course of the evidence, he was entitled to be confident in this respect. This has also been confirmed before this tribunal by the witness Dr. Giesen, the present works manager of Dardingen, who shared the main responsibility for the synthesis branch of Auschwitz. The efforts of the plant on behalf of the prisoners were also confirmed by the witness Schneider, now attorney-at-law and municipal director

of Joslar, who was dealing with special questions at Auschwitz. How can the defendant Schneider be expected to have become suspicious, being, according to all the evidence, only in a loose connection with Auschwitz?

That is why he may and must be trusted, when he asserts that he disbelieved the rumors about gasings at Auschwitz, of which he heard in 1944, and refused to see any connection between them and the Auschwitz plant and the Monowitz camp. There were, as the witnesses Fritzsche and Munch confirm and everybody knows, a lot of rumors abroad at that time. Of the selections for Birkenau in the Monowitz camp not even the construction manager Flust was informed, as is also confirmed by the witness Munch. Schneider, living at a distance of several hundred of kilometers from Auschwitz, was still less in a position to anticipate things like that, apart from the fact that no-one was able to believe it. The fact must not be ignored that the prisoners had been brought to Monowitz for a particularly important production purpose and had been trained there. It would be wrong not to mention the striking contradictions in the statements of the prosecution witnesses about volume and nature of the selections. I only point to the affidavit and the testimony of the witness Roring, who did not mind correcting figures of tens of thousands of killed.

In particular, later Fribilla in his affidavit and the witness Munch support the correctness of Schneider's testimony that he had no possibility whatsoever to get enlightenment on those rumors. Schneider, who had searched into the needs of the prisoners at Leuna had not with in spite of the great risk involved, would surely have been the last man to fail to take all possible steps in that case. But the goings-on at Auschwitz were shrouded into closest secrecy. Surely, the Gestapo would have called that rumor a lying propaganda, if anybody had inquired. Besides, Schneider would not have been able to name the persons, whom he had heard it from.

it also he would have gravely endangered them. But the same applied to those, whom he charged with doing this, and, lastly, to himself, even the International Red Cross was, according to the testimony of Monagh, completely deceived on the occasion of its inspections, and maintained, therefore, a passive attitude when the witness Court, as he testified here, told a commission from the Red Cross of what was going on. If the Red Cross had believed in those rumors, which at that time were already circulating abroad, it would certainly not have occurred that a neutral country, which is closely connected with it and features ancient and sublime humanitarian traditions, expelled a great number of racial and political persecutees, who had escaped into its territory, back to the German sphere of power. If even so awe-inspiring powers, which, at that, were outside the direct scope of German sphere of influence, were able to ignore the true facts and even to prevent their disclosure, it ought not to be possible to blame anybody within that sphere of influence for his failure to reveal and stop - on the basis of vague rumors - in time those most terrible, only now disclosed effects of a despotic regime. The same so, as even most of those prisoners who were, as functionaries of the concentration camp, implicated in these goings-on, are now exculpated, and rightly so, according to the statements of some Prosecution witnesses. Looking back, it is fair to say that any steps taken would have possibly meant the dissolution of the Buchenwald camp by the GIs and the annihilation of its prisoners, if, as far as the gasings were concerned, Hitler's stopping order of 1944 had not been issued which made all such steps unnecessary. But then, failure to take them is no longer relevant. In this point, too, no blame can be attached to Behrnsdorf.

As far as the further charges contained in the indictment under Count III are concerned, Dr. Schneider was ^{in no way} ~~also~~ not through the committees the number of which he was, connected with the business sectors involved herein.

With regard to Counts V and VI, I refer in this respect, and also generally, to the fundamental explanation of my colleagues as Defense Counselors.

In conclusion, may I say a few words as to Schneider's character and background. His professional achievements as a plant manager and inventor, recognized also by the prosecution, are shown by the documents submitted. His political attitude and way of thinking he explained himself to this tribunal. Schneider joined the Party in 1937, when, after the Olympic games, tension had relaxed in the home policy as well as in foreign policy. The economic and social evolution of Germany was meeting with the approval of many people also in foreign countries and only few realized that in the successes of the authoritarian leadership of state and economy all the terrible dangers of despotism were dormant. If Schneider believed that that he was not in a position to defy the invitation to join the Party as he to advance the scope of his personal and official responsibilities, in spite of his mental reluctance, it must be said that this is an argument which is not devoid of some justification for people in his or in similar situations, even the diplomat of an absolutely democratic country and belonging to the United Nations, who now holds a high position in his country because of his courageous fight in Germany, accepted as late as at the beginning of 1945, though most reluctantly, a high German decoration, because he was afraid of endangering the lot of his compatriots in Germany by declining it. If, on the one hand, the use of the partners

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was a lesser one in this case, the gulf between them, on the other hand, was the wider for that. In both cases one will have to view these resolutions with an understanding, since at all times politics demands concessions from nations as well as from individuals.

That Schmidt's intentions were honest in that respect, has been proved. For it has always been his aspiration to protect to the best of his knowledge and ability the people who were in his care from arbitrary treatment and exploitation. In this case too, the Prosecution failed to furnish any evidence to the contrary. For it was as little in his power, to find truth and justice in the face of the irreversibility of the regime, of its program and his secret terror, as it was to the best men of his nation. For that, he cannot possibly be punished or stigmatized as an offender against the laws of warfare and against humanity, with all its disastrous economic consequences the domestic time loss would entail for his own and his family's future and existence. All the witnesses who were interrogated about this have testified on behalf of his simple and objective sincerity, his strong sense of justice and his great consciousness in regard to avoid responsibility. The witness Reiss called him the classic *Betriebsführer*. Thus, this trial too has confirmed what I said at the end of my Opening Speech, namely, that his way of life was not only determined by his professional commitments, but also by all those qualities of his character. May this Tribunal, I pray, acquit this man.

Not guilty in all the Courts of the Reich.

Final Plea Schneider

CERTIFICATE OF TRANSLATION

2 June 1948

We, Joseph E. Goesser, Robert Hoffmann, John B. Robinson
and Fred Solomon hereby certify that we are duly appointed
translators for the German and English languages and that
the above is a true and correct translation of the
Final Plea Schneider.

Joseph E. Goesser
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Robert Hoffmann
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" E n d "

Final Pass, Settlement
(BNC 154)

Case 6
Defense

FINAL PLEA

submitted by Dr. Walter SIMMERS,
Attorney at Hamburg,

to the
American Military Tribunal VI

in Case VI:

Carl KRAUCH et al

for

Dr. Georg von SCHNITZLER.

Nurnberg, May 1948

Long



FRED FRIED SCHWITZLER

Your Honors,

1. For the last 2½ years I have lived in Dornburg in close connection with the War Crimes Trials, that is to say, under conditions which have been imposed on these trials by the Prosecution. It often appears to me as if I, with the Prosecution, were living on a desert island, far from present events and actual problems. If we stop to think why, we soon find a reason for it. The reason is that the Prosecution glorifies a certain date, the 8th of May 1945, and sees to it with conscious resolution that no evidence and no legal questions are dealt with which refer to the time after this date, as if history had stopped short on that day, the date of Germany's unconditional capitulation. I know that the Prosecution pursues a purely tactical purpose in protesting immediately when a fact is mentioned which applies to the past 3 years; it seems to have the feeling that the accuracy of its thesis of international law is jeopardized if the development of the past 3 years in Germany and in the world is regarded in the light of this thesis, it even seems to think it dangerous to judge all actions of the Allied military governments, after 8 May 1945, on the basis of the international law theory of this trial. I am equally certain that this basis of international law can only be recognized if not merely the actions of the vanquished but also those of the victor are dealt with, and if not only the development prior to the war but also the subsequent development is examined. International law carries its obligations for the victor as well as for the vanquished, as duly stressed

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by Justice LAMSON in the trial before the International Military Tribunal. ROOSEVELT's aim in the Nuremberg-Trials, that of establishing conclusive foundations of international law and with it an universal law, can be attained only if and as is the case with the Prosecution - legal judgment does not stop short at the moment when an absolute victor and an unconditional vanquished are established.

2. On 14 May 1948 the state "Israel" was founded - a fact which will have been hailed by the Prosecution as well as by me with David Ben Gurion as President of the new State. Already on 15 May the United States of America recognized this new state and already on this same day the neighboring Arab States began to make war on this new State. Israel, at once, approached the Security - Council of the U.N. and, shortly afterwards the United States of America requested the Security-Council to bring about the suspension of military activities because they constituted a breach of the peace. The Arab League has embarked on a war of aggression and the world, if it has any honesty at all, is now faced with the problem which has been confronting us in this tribunal for the last 9 months: Who has planned this aggressive war, how far can and must Politicians, soldiers and private industrialists at home and abroad be made responsible for it? I believe there must be many people in the world who would not welcome it if their latest actions were viewed in the light of the Prosecution's theories of international law, and this consideration alone reveals the entire problem of the indictment made at Nuremberg against German Industry for

FIMEL FLEM SCHWITZER

planning, preparing and supporting Hitler's war of aggression.

3. I believe that for legal reasons a decision in this trial as to Count 1 of the indictment, that is to say, the accusation of planning and preparing the war of aggression is far simpler than the Prosecution thinks and then would be assumed, judging by the enormously extensive material submitted by the Prosecution. It has repeatedly been stated that the entire German Industry and above all I.G. knew of, approved and supported plans for aggressive warfare. It is interesting to note that the Prosecution already took this view in the IMT trial and also in the first industrialists' trial against the Flick-Konzern but, in the latter, finally desisted from making this a count of the indictment because it did not feel very sure of its own arguments in this respect. Meanwhile we must add that in the Krupp-trial being conducted at the present time Alfred Krupp von Bohlen and his collaborators have been acquitted on Count 1 of the indictment by the American Military Tribunal. In spite of this the Prosecution tenaciously maintains its theory. This reminds me of the words by Edmund BURKE:

"The passion is exhausted, reason is worn out, experience has pronounced judgment, but obstinacy has not yet been conquered."

4. In Article 10 of Ordinance No. 7 of 16 October 1946, it was established that the decisions of the judgment by the International Military Tribunal shall be conclusive for all American Military Courts. The IMT sentence, however, rejected Germany's collective guilt proclaimed by the Prosecution and demanded positive knowledge of Hitler's aggressive plans whenever an individual defendant

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was to be condemned for aggressive warfare. Allusion was made to "recognized legal principles" in these words:

"It is one of the foremost of these principles that criminal guilt is personal";

as a pre-requisite for conviction for participation in aggressive warfare it demanded that the individual defendant "had knowledge of Hitler's aims and gave him his collaboration." In accordance with this the American Military Tribunal, in the preamble to its judgment of 22 December 1947 on the Flick-Kingern, referred to the "Law of civilized nations" and the "principles known to all experts in Anglo-American criminal law" and said:

"No one may be convicted unless his personal guilt has been proved."

My statement will prove that there was no personal guilt, as demanded by the IMT, or positive knowledge of Hitler's aggressive plans either in the case of my client Dr. van SCHWITZLER or in that of any other member of I.G., and that therefore the pre-requisite demanded by the IMT for a conviction for aggressive warfare does not exist.

5. As to law and evidence I should like to make the following statement in this respect:

1. If defendants have been sentenced for planning and directing aggressive warfare by the IMT-judgment, this applied exclusively to the highest political and military leaders of Germany previous to and during the war. The conviction therefore referred to persons who had acted on behalf of the State and who were representatives of the State by virtue of their official position. The problem, however, has not been decided by the International Military Tribunal as to whether an industrialist, that is to say, a private individual, can be made

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responsible for actions involving international law. The doctrine of international law the whole world over was so far based on the assumption that only states were bound by the regulations of international law, regardless of whether it was a question of statute - or customary-law. International law contains obligations incumbent on the state and rights which are the prerogatives of the state. The individual private person, by international law, is neither granted prerogatives nor bound by obligations, unless certain ordinances have been transplanted into the criminal legislation of individual countries and, in this manner, have become national law. This interpretation, which was entirely prevalent until the second world war, can be deduced from literature, from the meaning of statute agreements and also from their wording. I need mention only a few examples:

In the Hague Rules for Land Warfare of 1907, mention is made only of the "contracting powers" ("les Puissances contractantes").

In Article 43 of the supplement to the Hague Rules for land warfare, as in many other articles, allusion is made to the "occupants" and in article 44 to the "belligerents". In both cases the meaning of the law proves that the occupying, that is to say belligerent, state is meant. Consequently, in article 55, the jurisdiction over state property in the occupied territory is incumbent on the "occupying state."

In the same way the Kellogg-Briand-pact of 27 August 1928 alludes only to the "High contracting parties", that is to say states only.

It is of special interest that in article 41 of the supplement to the Hague-Rules for Land Warfare it is expressly determined that the state is responsible for the compensation of damages where the conditions of an armistice have been violated by private persons acting on their own initiative.

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In this one exception where private persons act on their own initiative, provisions are made for the individual punishment of guilty private persons. But even then only in such a form that one contracting power can demand from the other contracting power the punishment of the guilty person. The final decision in this connection is, however, given in Article 3 of the Hague Rules for Land Warfare of 1907, where in particular the case of violation of the Hague Rules for Land Warfare is dealt with. It is decreed that the "belligerent party", that is the State, is bound to pay compensation for damages and in the second sentence it is clearly established that the State is responsible for all actions committed by those persons who belong to its armed power.

It is in full accordance with this reasoning if the highest judicial authority in the sphere of international law, that is to say, the Hague International Tribunal, stated in 1928:

"It must readily be conceded that according to a long established principle of international law the official agreement, being an international agreement, creates in itself no direct obligations or obligations for private individuals."

6. I do not overlook the fact that in recent times the tendency has arisen to make private individuals responsible under international law. This tendency has also found expression in the judgment of the International Military Tribunal, and his High Court has confirmed the responsibility of private individuals. It must however be taken into consideration that the Trial before the International Military Tribunal did not concern private people, as the present trial does, but responsible officials of the state, that is to say persons who by virtue of their office acted for the State.

It may be a perfectly sound point of view, not to adhere under all circumstances to the, in fact quite clear text of international law, but to argue instead on the basis of its meaning, and to contend that it is the representative of the state who is legally responsible, because the state as an anonymous subject cannot be prosecuted as such, but can at best be held liable for payment of damages. But it is on no account permissible to make a private individual, namely an industrialist, legally answerable, as long as he is not acting on behalf of the state, and is not a government official or functionary, and who, in view of the described legal theories hitherto applied, could not possibly, and actually did not, imagine that he, as well as his government had the duty to ensure that international law is observed.

In view of this argumentation, I am in agreement with the contention of the Prosecution in the great IAT trial, though not with that of the Prosecution in this trial. I quote the French Chief Prosecutor, DE MEYER, in the indictment of 17 January 1946:

"It is clear that in the execution of a modern state, responsibility is confined to those acting directly on behalf of the state, as they alone are in a position to judge the legality of orders given. They alone can and shall be prosecuted."

Perhaps the High Tribunal remembers the "Legal opinion on criminal responsibility of private individuals in breach of international law", by Professor Dr. Herbert KAUS, a world renowned professor of international law, which I submitted when presenting my evidence, and which was submitted for argumentation purposes as Schnitzler Exhibit No. 285. I do not wish to take up the time of the

High Tribunal unnecessarily, and I will therefore refer to this
 detailed and comprehensive opinion for further justification of my
 legal opinion, and ask the High Tribunal to avail itself of same in
 support of my legal opinion.
 7. When making his final statement in the Flick Trial on
 24 November 1947, HERFELD TAYLOR tried to refute my above-mentioned
 contentions with the assertion that my opinion had long been proved
 wrong; he made reference to individual precedents. However, the
 precedents that he cited were all factual cases, in which the charges
 were such as are punishable under every criminal code. He talked
 for instance of earlier and subsequent and always of acts committed
 by an individual private person, whereas here, in the charge of
 aggressive war, we have state measures within the scope of
 international law, for which at best the person acting on behalf
 of the state may be held responsible.

On the same occasion, General TAYLOR, to my surprise, turned
 against his own colleague, the French Chief Prosecutor DE MENTON,
 whom I have just quoted. In view of de MENTON's importance, one would
 hardly suppose that General TAYLOR is right in saying that de
 MENTON's real views were not those expressed in the trial; and his
 argument that de MENTON did not represent the views of the French
 government seems to me even less justified. I could imagine that
 the US Prosecution and General TAYLOR too have represented opinions
 here in Nuremberg, which do not conform with those of the US
 Government.

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The legal issue of interest here was also dealt with by the US Military Tribunal in the Flick verdict; the Tribunal declares:

"The view that international law deals only with the actions of independent states, and cannot provide for punishment of individual persons, can no longer be upheld."

It made reference to the "Case 'Ex parte Quirin' recently decided by the Supreme Court of the United States". Thus the American Tribunal arrives at the conclusion that private individuals too can be held responsible, and the difference in guilt between the latter and the government official, in other words the person acting on behalf of the state, exists only "in degree, not in essence". Against this there are the U. Military Tribunal's own words, that the view held by me "can no longer be upheld", whereby it admits that such a view was justified up to the time of the decision of the Supreme Court of the United States in 1942, and represented the prevalent opinion. Now, if this is so, a German industrialist cannot be held responsible under international law, just because in the middle of the war the Supreme Court of the United States adopted a new legal outlook, an outlook which consequently did not exist at the time of the acts under discussion, i.e. 1939, and of which the defendants were moreover unaware until now, after the war.

8. 2. However, even if the High Tribunal should hold the view that a private industrialist can be held responsible within the Military scope of aggressive war crimes, the findings of the International Tribunal in its verdict of 1948 eliminate this possibility. As mentioned earlier,

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it is a condition sine qua non according to the IMT verdict, that the defendant knew HITLER's plans of aggression and supported him in the knowledge of such plans. The IMT verdict here applied severe standards to the Prosecution's duty concerning its submission of evidence. It refers repeatedly to the "4 secret conferences", and states the following:

"These conferences took place on 6 November 1937, 23 May 1938, 22 August 1938 and 28 November 1938.

At these conferences HITLER made important statements about his aims, worded in such a way as to make their meaning quite unmistakable."

I have introduced the documents on these conferences as evidence in this trial, namely as Schnitzler Exhibits 18 - 20. They are the so-called key documents of the first trial, described in meticulous detail by the High Tribunal in its verdict, and used as basis for the conviction or acquittal, as the case may be, of the major war criminals.

These 4 conferences, which form the subject of these documents, run like a red thread through the entire verdict. In each case, the Tribunal, when convicting or acquitting on the aggressive war count, states whether the respective ^{defendant} participated in one or more of these meetings, or whether, due to his close and intimate relations with HITLER, he learnt of the contents of these Hitler speeches by some other means.

It must be noted first of all that these statements of HITLER's were made exclusively before the military high commanders and a few high-ranking political leaders, such as NEUBERG. Not one of these meetings was attended by a single German industrialist, let alone a member of IG, or SCHMITZLER.

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In a voluminous 50 page-excerpt from the verdict (which I introduced in the trial as Schnitzler Exhibit 21), I have copied out every one of the innumerable passages of the verdict dealing with those 4 secret conferences. This excerpt is definite and conclusive proof that, on the war crimes count, the International Military Tribunal convicted a defendant only if the Prosecution had proved that he had positive knowledge of HITLER's plans of aggression as revealed in these 4 secret conferences. The excerpt shows further that in numerous cases even the so-called major war criminals were acquitted on the aggressive war charge, simply because they did not participate in these conferences. It is sufficient to refer to this connection to two completely different instances:

SCHACHT, who did not participate in any of these meetings, was acquitted, although the verdict explicitly refers to him as "a central figure in Germany's rearmament program" - with the remark that rearmament as such is not a crime, at any rate not if there is no positive knowledge of the plans of aggression. It is particularly significant that SCHACHT, an out and out National Socialist, close confidant of HITLER and the Chief of the Party Chancellery, was acquitted by the IMT on the aggressive war count, namely on the following grounds:

"There is no evidence that SCHACHT knew of HITLER's plans to prepare, launch and wage aggressive wars. He did not attend any of the important conferences, at which HITLER revealed his aggression plans piece by piece."

Now, if a SCHACHT was acquitted, one cannot possibly convict a SCHMITZER; and if a SCHACHT, in spite of his prominent position and superior knowledge of Germany's entire economy did not

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know of HITLER's plans, nobody can seriously allege that SCHWITZLER had such knowledge, although he held no position in HITLER's state and had no connections whatever with HITLER or any of his confidants.

9. Let me offer another argument in this connection:

In evidence, the Prosecution submitted the voluminous document on the "Fall Green" (Oise Green", which contained the plans against Czechoslovakia and likewise played a great role in the IMT trial in regard to the knowledge of Hitler's plans (388 PS Prosecution Exhibit 1041). In the session of 26 January 1948, I submitted the motion to cancel this document, because the Prosecution offered no evidence that SCHWITZLER or any of the co-defendants knew of these plans of HITLER's. As I recall that after a thorough debate, this document was voided as evidence in this trial (see also page 5878 German, 5833 English).

The Prosecution, just as in the case of HITLER's plans for Czechoslovakia, is unable to establish proof of knowledge regarding the said key documents. But according to the IMT verdict, a defendant in this trial may be convicted on count 1 only, if the Prosecution has established proof of positive knowledge of these key documents in the sense of the IMT verdict - which is precisely what it has failed to do.

FINAL FILE SCHWITZLER

10. 3. Instead, the Prosecution tried, to bring indirect proof of his knowledge thereof by submitting numerous documents in circumstantial evidence. I do not believe that in view of the DDT-judgment, circumstantial evidence suffices to prove his direct knowledge, all the more so, since in all instances the attempts of the Prosecution, made during the trial against the chief war criminals, failed to establish proof by means of circumstantial evidence, especially in the case of Schacht, for instance. Despite all this, I feel obliged, to deal with at least some of the circumstantial evidence, in order to refute the Prosecution even in so far.

11. a) The I.G. allegedly supported Hitler as early as in 1932 and then continuously from 1933 onwards. I do not need to go into details on this subject, because Herr Dr. DIEZ has dealt with it in his presentation of evidence and in his final plea. However the Prosecution mentioned one special event, in which von SCHWITZLER was involved: On 20 February 1933, in view of the impending Reichstag elections in March, a meeting was held in Berlin to which Goering invited 20 - 30 industrialists by cable. The assertion is voiced in the indictment and in the trial brief, that at this meeting Hitler expressed "his tremendous intention" of seizing power by force, if he did not succeed in the elections, and was said to have stated, that "private enterprise in the age of democracy was not tenable". The true facts have been made clear by the evidence and have established the incorrectness of this assertion made by the Prosecution, and this moreover on the basis of the testimony given by the witness Schacht in the DDT-trial and in the Flick-trial (Schnitzler Exhibit 9 and 10) and by the witness Dr. Flick in the I.G.-trial (hearing of 12 March 1946). Both witnesses were present at this meeting and agreed in their testimony, that

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this conference merely dealt with the creation of an election fund, in the same way as those held under the auspices of democratic governments before 1933; moreover the election fund was not only used for the National Socialists alone; it was to be put at the disposal of the NSDAP and the German National People's Party (Deutschnationale Volkspartei). During the conference one of the industrialists demanded that the election fund should at the same time also be put at the disposal of the German National People's Party and Flick testified that it was actually Schnitzler, who made this proposal at the meeting - a proposal which was received by Goering with displeasure, but which was adopted by the meeting, in spite of this; Moreover Flick testified that at the time Hitler spoke about unemployment and the danger of Communism, and definitely supported the preservation of private property. Although industry allegedly adopted a "very sceptical attitude" towards Hitler, this trend of thought had had a very reassuring effect. Neither did ^{express} Hitler/~~any~~ have any intention of seeking power by force, which for logical reasons too, was out of the question, because at that time he had already been in power for one month. It is therefore in no way incriminating, if the I.G. contributed RM 400,000.- to this election fund, a sum which Flick quite rightly considered "modest" in view of the fact, that he contributed RM 250,000.- from the capital of his Flick-Konzern, which was smaller, and in view of the fact that in 1932, on the occasion of the election-battle between Hindenburg and Hitler for the Reich Presidency Flick offered 1 million RM in favor of Hindenburg, and on the occasion of the elections the I.G. had also made large monetary contributions in favor of Hindenburg. In view of this very fact, namely that as late as in 1932 the I.G. and Flick definitely

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turned against Hitler and National Socialism, they were forced to contribute to the election fund of 1933 following Hitler's rise to power, and after his fundamental opposition ^{to} the Konzerns became generally known. It seems important in this connection to point out, that during a conversation with Flick Reichsstatthalter Butschmann said: "I am in favor of maintaining private industry with one exception: the I.G. must be nationalized."

12. b) As a further example, the Prosecution introduced Goering's speech on 17 December 1936, made in the Prussianhaus in Berlin, where-in before a large audience of government officials and industrialists, Goering explained the aims of the Four Year Plan. The Prosecution considers the final words of Goering's speech especially incriminating: "We are already at war only no shots are being fired as yet", and the fact that 5 days later, i.e., on 22 December 1936, on the occasion of a meeting of the I.G.'s Dye Staff Committee, Schnitzler made a confidential report on Goering's speech: "regarding the tasks of German industry in connection with the implementation of the Four Year Plan". This circumstantial evidence is also of no significance. The witness Dr. Kuemper (hearing on 28 January 1948) who according to the minutes participated in the meeting of the Dye Staff Committee, stated that the terms "confidential" or "highly confidential" were of no significance, because these terms, just as later on the words "state-secret" were greatly abused, although often applied to the most harmless matters.

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Dr. KUEPPER did not remember during his interrogation, that SCHNITZLER made a report on this speech to the Dye Staff Committee, or, heily because SCHNITZLER only reported on the factual and economic part and not on Goering's bombastic closing phrase such as was customary with him and which he liked to quote from a military vocabulary, just like many other National Socialists, even if it was only a matter of an analogous application to industrial affairs.

I should like to recall for instance, all the well-known expressions which were used by National Socialists in connection with industrial questions: "bottle of production", "Labor Front", "Soldiers of Labor" and "Dung instead of Butter". Thus Dr. KUEPPER also remembered Goering's closing phrase from that time: "only a shots are being fired as yet"; however he did not remember it from SCHNITZLER's report, but - and this is the essential point - from the publications of that time; for this speech was actually printed in the German and foreign papers at the time and thus also in the "Times" and in the "Volkischer Beobachter". This expression in particular became the subject of many discussions, as is also confirmed by Dr. KUEPPER. It is significant that unfortunately, foreign countries, too, even as the Germans and SCHNITZLER, did not consider such bombastic phrases as important as they should perhaps have been considered, and especially that they did not conclude from them the intention to wage an aggressive war, because of the constant promises of peace on the part of Hitler. Perhaps it is also of interest to mention in this connection, that Winston CHURCHILL at a still later date, even after 1937, strongly persuaded the German State Secretary v. KUEHLMAN with whom he was in personal contact, "to become a

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party member" and added, "If people like KUEHLHORN keep away, how could a moderate attitude be voiced in the NSDAP or gain any superiority" (see Affidavit KUEHLHORN, SCHNITZER Exhibit 14).

13. Furthermore charges have been brought up against the I.G., that through their foreign representatives and the so-called I.G. liaison officers they carried on industrial espionage and that they worked in close cooperation with the Auslandsorganisation of the party, which was headed by Reichsfuehrer BOHLE. I am only able to say very little on this subject, as its most important points have been dealt with by Dr. NATH in his defense for Dr. ILGNER. The Prosecution however, also charged Dr. von SCHNITZER in particular, in that they referred to the commercial committee and the meeting of 10 December 1937, when a resolution was passed regarding "the collaboration with the A.O." according to which nobody was to be invited to the foreign branches, unless he was a member of the German Labor Front and his attitude towards the new order had been established.

In answer to this charge it is sufficient to refer to the hearing of the evidence:

as) To begin with, the Prosecution in no way made it credible, let alone furnished any proof, that the A.O. of the Party participated in preparations for aggressive warfare, knowing Hitler's plans for aggression. The fact that the party-political Auslandsorganisation was equally unpoplar with German and foreign firms at home and abroad, because it made National Socialist propaganda, does not constitute proof.

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bb) My detailed examination, during the proceedings of 26 January 1948, of the witness Dr. OVERHOFF, a collaborator of Schnitzler's, has shown clearly that the so-called I.G. Liaison men did not concern themselves with politics, and even less with the preparation of war, but worked merely to establish economic contact between the representations abroad of the I.G. in the various countries, for instance, in the South-American countries and to bring about cooperation within the I.G. representations in the economic sphere, for instance, in questions of foreign exchange and the different tariff and import measures taken by the various countries.

cc) This same examination of Dr. OVERHOFF's yielded a final clarification of the so-called "collaboration with the A.G.". There had been constant friction between the I.G. and the party political organizations abroad which became more pronounced as time went on, especially as the A.G. attempted to gain influence over the representations abroad of German firms, and the German firms as well as the I.G., resisted. Dr. OVERHOFF described vividly that the heads of the I.G. representations were mainly men who had been in the business for a long time, in some instances for some decades and who had closest business and social contacts with authoritative industrial circles abroad. It was out of the question to expect such persons enjoying a high standing abroad to cooperate with the politically and socially ill-reputed representatives of the party political organizations abroad. It was all the more impossible to comply with this demand of the A.G. in cases where the representatives abroad were foreigners or Jews. When, as a consequence, the differences with the A.G. which were promoted by Hitler and the

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Party became more pronounced, Dr. von SCHWITZER and his co-worker, the late Kommerzialrat WAIBEL, tried by diplomatic means to find a compromise so as to be left in peace by the A.O. as far as possible. For that reason Kommerzialrat WAIBEL very skillfully conducted some negotiations with the A.O. in 1937, which the prosecution regards as incriminating. In view of the A.O.'s position of power, the agreement as laid down in the records dated 10 September 1937, (Prosecution exh. 353, Doc. book 45, number 10) actually was an absolutely favorable compromise, not committing the I.O. to anything. No representative abroad had to be dismissed and none were dismissed. The I.O. merely conceded that new employees went abroad - this could not mean employees in leading positions but only junior employees - should belong to the Labor Front. One can only understand that this was a success if one knows that the A.O. attempted to get their own people, and moreover, "party veterans" or at least party members, into these representations. This was prevented, and the concession that the employees had to be member of the Labor Front was a success in so far as it was only an unimportant concession, or, as Dr. OVERBECK said, "an absolute matter of course and a tautology", as all the large firms already belonged to the Labor Front and the employees eo ipso were members, which meant merely an obligation to pay dues but not any party membership.

The concession regarding the so-called declarations of loyalty containing this agreement, which were submitted by the prosecution, was equally non-committal. Dr. OVERBECK confirmed that within his whole, immensely large sphere in the dye-stuff field

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no such declarations were signed, and at the same time, I have proven this in individual cases by submitting 4 affidavits (SCHNITZLER exhibits 37 to 40).

If the prosecution had known the conditions prevailing in Germany at that time, they would never have regarded these heresies as incriminating; in my opinion they could have realized these things, since through their investigations and their members of former German nationality they are sufficiently well informed on the party's internal-political position of power at that time.

In conclusion of my argument I beg to point out that according to the list drawn up by the witness Dr. OVERHOFF which I submitted as evidence (Schnitzler exh. 3), only 3 of the 22 leading men of the I.G. representation abroad were members of the party. It must be shown more clearly that the I.G. actually did manage to steer clear of the A.C.'s influence.

14. d. The prosecution maintains in its trial brief (page 71) that in spring 1940 the I.G. set up an organization named "Company for Sales Promotion" through the defendant von Schnitzler which "was under his supervision and was to serve as a cover firm for espionage agents sent abroad by the Counter-Intelligence". As a matter of fact, this allegation is a complete misrepresentation and the prosecution has not proven any of these allegations. The witness Dr. DOERING rightly said in his interrogation of 3 May 1948, that "everything imaginable is false" in this allegation. The company for Sales Promotion was founded long before the war, namely in 1937, and had nothing to do with the High Command of the Armed Forces or the Counter Intelligence. It was founded neither by the

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I.G. was by Schnitzler, but by a Herr KUNZLER who belonged to the canvassing branch. Accordingly the purpose of the company lay in the sphere of canvassing. This company, in the interests of industrial and commercial enterprises, obtained records on sales markets at home and abroad for specified types of goods. It carried out investigations and analyses of the markets and worked for private firms who wanted to increase their sales on basis of the records supplied by the company. Legally speaking it was a society which had a Verwaltungsrat consisting of several prominent industrialists, because KUNZLER, the founder of the firm, had requested the industry to support him in his scheme. This Verwaltungsrat included industrialists who had special experience in the field of canvassing and advertising, for instance, Dr. MORGENTHAU, the chief of the Information and Press Department of the Deutsche Bank; Dr. Smak, a special adviser on canvassing; Reinhold KRAUSE, owner of the best-known German paper factory Max KRAUSE; Dr. DIERING himself, as canvassing specialist of the Reich Group Industry; and, besides many other persons, also Dr. von Schnitzler who, as Dr. DIERING stated, had made a name for himself in the field of canvassing and in the field of exhibitions and fairs at home and abroad. When Dr. von SCHNITZLER became chairman of the Verwaltungsrat it was due to the same reason for which he was appointed to the Canvassing Council and chairman of Exhibition and Fair Committee of the Reich Group Industry. Schnitzler had a particular reputation in this field, which he had already created for himself during the twenties, that is during the time when STRESEMANN appointed him Reich Commissioner for the Barcelona World Fair in 1929.

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It was for the same reason that, following an invitation, he lectured on questions concerning exhibitions and fairs to the Italian Industrial Association and that the International Chamber of Commerce at Paris appointed him Chairman of its Exhibition and Fair Committee, and finally also that - like other industrialists - he became a member of the Aufsichtsrat of the "Die" Anzeigen A.G., which, contrary to the biased statement of the Prosecution, was, according to Dr. DÖRRING, no propaganda agency, but merely an advertising office. All these agencies were offices on a basis of purely private economy, and the Prosecution takes advantage of all these offices to make charges against my client. It was easy to refute these charges by means of Dr. Döring, the best informed witness and a specialist in the field of advertising. It can hardly be understood when the Prosecution turns these points in the field of industrial advertising - considered as free of blame by an impartial person, - into charges; this can be understood only if the Prosecution wants to take advantage of the idiom verb frequently exploited by political propaganda "senken aliquid haeret".

15. The only point needing explanation with regard to the agency for sales promotion concerned the documents according to which this agency became connected with the counter-intelligence office attached to the High Command of the Armed Forces, namely Major BLOCH, and it is true, from the date of its establishment, but definitely during the war. It is important, first of all, that the agency received instructions from Major BLOCH without ^{the} Vorwaltungsrat or SCHMITZLER having anything to do with it, and that, according to Döring's statement, the Vorwaltungsrat was informed by Herr KUEHNLE only subsequently.

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It is equally important that these instructions did not concern the field of espionage - as it is supposed by the Prosecution -, but the company's business proper, i.e. purely industrial matters. Nor is this fact astonishing, because Major BLOCH's department had no connection at all with espionage and military counter-intelligence, but dealt exclusively with counter-intelligence in the economic sphere. But it happens all over the world in the same way that during the war, if it is necessary, such a military agency makes use of a firm that can supply information in the purely economic field.

16. The other point, too, which was considered as a charge by the Prosecution, was explained by Dr. Doering. IG and other firms, e.g. AEG and Siemens, did not make any payments to the company in order to support espionage, but exclusively to help the firm during the war by granting credit, namely during a period in which the firm's financial position naturally deteriorated for lack of sufficient orders for sales abroad and at home. In addition Dr. Doering stated that neither he nor SCHWITZLER nor the other executives liked to see KUENZLER receiving orders from the counter-intelligence office Zeitz, but that, being members of the Verwaltungsrat, they could not forbid the Vorstand to do so. On the other hand SCHWITZLER, KRAUSE and DOERING were not inclined to continue their functions as members of the Verwaltungsrat, if, owing to the war, the position of the company became dangerous; furthermore Herr KUENZLER himself left Berlin and appointed a deputy who was unknown to the Verwaltungsrat, with whom he was ^{consulting} the Verwaltungsrat. Thereupon all three executives decided to retire from the Verwaltungsrat,

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and SCHNITZLER and KRAUSE asked Dr. Doring to inform the company of this in writing, which he did.

17. The circumstances are similar with regard to the Prosecution's statement, in connection with Major BLOOR, that Jesse v. PUTTKAMER, an official of the Verkaufserderungs-Gesellschaft (sales promotion company), went to Shanghai on a special mission for this company, sent reports to Herr v. SCHNITZLER and worked as a spy in China. To refute these statements, I have proved that PUTTKAMER was never employed by IG (SCHNITZLER Exhibit 192/193) and was employed by the Sales promotion company only for a few months, with at having any connection with the High Command of the Armed Forces. The Prosecution's statement is correct only insofar as PUTTKAMER went to Shanghai, not, however, by order of the Sales Promotion Company, because, as stated by Dr. Doring, his employment with the Association had already been terminated. Neither did PUTTKAMER - as it is thought by the Prosecution - "apparently" send "reports", but he only wrote a purely private letter in connection to Dr. SCHNITZLER. Doring and Schnitzler did not know what PUTTKAMER was doing at Shanghai. Subsequently it became clear from the documents submitted by the Prosecution (Prosecution Exhibits 937 and 939 in volume 49) that PUTTKAMER was supposed to have ^{co-}operated with the Japanese Army after the unconditional surrender i.e. after May 6, 1945. The PUTTKAMER case, which has been emphasized so much by the Prosecution is, I think, definitely settled by the fact that the documents incriminating PUTTKAMER - not SCHNITZLER - deal with the period after the collapse and, for this reason, at my suggestion, the document Exhibit 939 was eliminated from the evidence by this Tribunal on May 3, 1948 (transcript page 13576).

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18. a. The next and last piece of circumstantial evidence which I should like to deal with, and which the Prosecution interprets as planning and preparation of aggressive wars, is the so-called "New Order" (New Order), submitted by the Prosecution as Exhibit 1051 in volume 51. In its trial brief (pages 74 and foll.) the Prosecution advances the theory that in the New Order "the IG's desire to conquer and rule was reflected" and that, immediately after France's defeat in the summer of 1940, IG had developed its plans for taking over Europe's chemical and pharmaceutical industry and for the control and domination of European production in the interests of the expansion of Germany's military power and the subjugation of the Continent's economy under German control. All this sounds grandiose and powerful, and the Prosecution has tried to enhance this impression by inserting long explanations and quotations in its statements. If, however, these documents are considered calmly and my examination of the witness Ministerialdirigent Dr. SCHLOTTERER of the Reich Ministry of Economy, who was originally called, as a Prosecution witness, is evaluated, little is left of the high-sounding phrases of the indictment and the trial brief and the Prosecution's statements in connection with the evidence, very little indeed considering that they were to serve as the Prosecution's proof of the planning and preparation of an aggressive war.

aa) The New Order represents theses of an economic nature dealing with the whole of European chemical industry. Many of IG's personalities contributed towards these theses, which is natural in view of the enormous extent of these works; Dr. KUEHLER specified these points in his examination.

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The material in the possession of many departments, and particularly of the department for political economy, was used. The work was done at the instigation of the Reich Ministry of Economy, which is shown by the documents. From a legal point of view, it must, above all, not be forgotten that this work was done in the summer of 1940, i.e., during the war. The attached letter which was addressed to the Reich Ministry of Economy, for the attention of Dr. SCHLOTTERER, signed by Dr. v. SCHNITZLER and Dr. KRUEGER (and submitted by the Prosecution as exhibit 1051), bears, for example, the date of 3 August 1940. This fact alone shows that the work cannot have any connection with the planning and preparation of aggressive wars, the less so since it was only the result of Germany's victory over France at that time. Furthermore Dr. SCHLOTTERER, when examined by me on 27 January 1948, most definitely confirmed that this "Government plan New Order" was not connected with the origin of the aggressive war or with armament questions (transcript pages 5901 and 5906). SCHLOTTERER added that, apart from other reasons, this government plan could not have anything to do with armament questions, because the Ministry of Economy never dealt with armament questions; the High Command of the Armed Forces, which included a special armament office, was responsible for such matters. This armament office of the High Command of the Armed Forces was, however, by no means concerned in this affair. I am inclined to think that Dr. SCHLOTTERER, who ordered this work to be done, was better informed about this affair than the Prosecution.

bb) The affair becomes particularly clear if we consider the reasons which led to this extensive work being done. Dr. SCHLOTTERER has specified this point in detail in his examination (transcript pages 5894 and foll.)

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He points out that his order was "to make preparations for peace-time economy, for the peace treaty in the economic sphere". The problem was a "new order for peace-time economy" and he stated the following:

"The affair started when shortly before the end of the military events in the West - this may have been about June 1940 - State Secretary Dr. LAMPERT called a meeting of the departmental chiefs in the Reich Ministry for Economy and said that peace negotiations and probably in the near future peace negotiations would take place. It was the wish of Minister FUNK that preparations were made for these peace negotiations, and he commissioned the departments of the Reich Ministry for Economy with the task of collecting material. State Secretary Dr. LAMPERT then gave orders to the effect that this material should be collected and classified by us."

Dr. SCHLITZER then describes that shortly afterwards the ministry learned that HITLER, GOERING and RIIBENTROP were also concerning themselves with the question of the economic new order of Europe after the war. In fact HITLER was thinking of appointing a Reich Commissioner to deal with this question. The ministry was greatly concerned about this, because - due to its knowledge of previous similar cases - it feared that purely economic questions would then be dealt with by persons who were not competent and only thought in terms of politics. In order to avoid this, the ministry of Economy took over the matter and succeeded in obtaining the task of carrying out preparations for a European peace economy. On the basis of this commission, Dr. SCHLITZER turned to economic organizations and the large economic enterprises - just as in previous cases when negotiations with other countries were necessary - in order to gather material for future negotiations. Dr. SCHLITZER expressly stated that the ministry of Economy,

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in cases when it was in need of material, after turned to the IG since it had an economic department and ^{scientifically} trained personnel, and that the Ministry also turned to economic groups and other large firms according to the type of economic problem with which it had to deal. This statement is proved by a letter from the Reich Office Chemical Industry of 19 June 1940 to the IG (Schmitzler Exhibit 5), according to which the Reich Minister for Economy asked the Reich Office Chemical Industry, the IG and 10 other German chemical firms for information concerning international cartel agreements and conventions between German and foreign industries, and various other economic questions.

The fact that this was only a collection of material on the part of the Reich Ministry of Economy for the preparation of the intended peace negotiations, is already proved in accordance with Dr. SCHLOTTERER's statement - by the documents submitted by the Prosecution. Various references are there made to the tasks "after the end of the war" and mention is made of the "peace planning" of the Reich Ministry of Economy.

In view of this fact, it is hard to understand how the Prosecution can see in the material, submitted by the IG on the request of the Ministry, any evidence for the planning and preparation of aggressive war. In any case, the opinion of the Prosecution is contradicted by this fact, for a treatise which is needed by the Ministry for the purpose of peace negotiations, is the exact contrary of a treatise dealing with the preparation of aggressive war, and it is wholly irrelevant whether the treatise meant for the conclusion of peace can be approved in

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detail, or not. A lot can be said on this matter, and experience proves that before the conclusion of every peace treaty such questions have always been discussed at considerable length.

In conclusion I should only like to refer to the fact that this plan by the Government, the "New Order", has in no way been kept secret. Dr. SCHWITZER reports (page 5908) that the Minister for Economy held a large newspaper conference at which German and foreign press representatives, and at that time also American press representatives, were present. The speech by the Minister for Economy to the press was printed and distributed in hundreds of copies at home and abroad. And lastly it is also significant that according to SCHWITZER's statement, these treaties, i.e. the work done by governmental offices, had no practical consequence and that, because - in SCHWITZER's words - "it was a planning for peace in the rather unrealistic hope that one day the Third Reich would start a Round Table conference with its enemies". This hope has already vanished as from 1941, and the conferences and work decreased accordingly and eventually stopped altogether.

19. 4. My statements so far have shown that the Prosecution have not succeeded in proving either by direct or circumstantial evidence that SCHWITZER and the other representatives of the IG had positive knowledge of HITLER's aggressive plans and are guilty of conspiracy in HITLER's aggressive acts. I believe the Prosecution know that they cannot prove their submittal by direct evidence, for they also know a priori that in this case proof by circumstantial evidence would not be possible either. They therefore resubmitted

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to furnish proof by submitting statements by SCHNITZER, made during his stay at the Freungeshelm prison in 1945. For this purpose the Prosecution took the enormous trouble of giving new form to SCHNITZER's numerous statements of 1945, and then submitted affidavits by SCHNITZER from 1947 which for the most part repeated and confirmed the statements from Freungeshelm of 1945. Altogether they submitted affidavits of more than 250 pages, hoping that in this way SCHNITZER would incriminate himself and the other representatives of the IG. I had already protested against such procedure in the sessions of 26 and 29 August 1947, and on 2 September 1947 by referring to the fact that the statements of 1945 as well as those of 1947 were not made voluntarily but under heavy physical and psychological duress. My protest was rejected at that time. At the session of 29 April 1948 I asked the Tribunal to reconsider its rejection of 2 September 1947, in view of my action at that time, and in view of new evidence. At the same time I asked for permission to prove that pressure was brought to bear in 1945 as well as in 1947. This permission was granted, and I had already cross-examined the witness HAEFLIGER concerning the pressure exerted at Freungeshelm in 1945, when a new decision restricted me to the events of 1947. After the conclusion of evidence I see the legal and factual position with regard to the affidavits as follows:

aa) I am of the opinion that according to Anglo-Saxon law as it is applied here, it is unlawful for the Prosecution to submit as evidence in a trial the affidavit of a defendant, and that on an occasion when the defendant

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is not in the witness stand.

In order to support my legal opinion, I refer to the statements of two judges in the Flick trial, in the sessions of 8 November 1947. In this session, the prosecution submitted affidavits by the defendants. Presiding Judge SEARS said to the prosecutor:

"If you submit an affidavit then it is the same as if you were calling the man to take the stand as a witness.... You cannot prove a confession by means of the confessing person's affidavit, which has been procured by the Prosecution. In the State of New York this would definitely be a witness."

Judge RICHARDS added:

"In the State of Indiana the affidavit would not be admissible at all."

And presiding Judge SEARS:

"In the State of New York it would not be permissible at all, because you would have to produce the witness."

During the trial, Dr. v. SCHWITZER has not taken the stand as a witness. Accordingly in my opinion his affidavits should have been cancelled. In this trial, the Tribunal has not accepted this opinion; it has only stated that the affidavit of a defendant who did not take the stand as a witness, does not affect the other defendants but only the defendant himself. In this sense the Tribunal promulgated its decision on 11 May 1948 (transcript p. 14260 English). If the Tribunal does not accept the affidavit of a defendant with regard to the other defendants, then this was done because the Prosecution could not produce the affiant, i.e., Dr. v. SCHWITZER, for cross-examination by the counsel for the other defendants. I am of the opinion that SCHWITZER's affidavit should also be cancelled as regards the defendant himself, as here also it is

a case when the Prosecution is unable to produce for cross-examination the affiant whom they themselves have made their own witness. If I, as Counsel for the defense, should wish to oppose the affidavits submitted by the Prosecution, then I must have the possibility of cross-examining the affiant, i.e., my own client. If I call my own client to take the witness stand, then he is my own witness for the purpose of direct examination, but not for cross-examination. I am afraid that in this way we will get involved in a juridical maze which can only be avoided by following the legal opinion as expressed by 2 judges in the Flick trial.

bb) I must also object to the fact that the interrogators in Frankfurt in 1945, as well as Mr. SEECHE as representative of the Prosecution in 1947, induced my client to give evidence against himself. I regard this as unlawful and refer in this respect to the American Constitution, i.e. to the 8th Amendment to the Constitution. There it is stated in par. 3:

"Furthermore nobody may be forced in any trial to give evidence against himself."

In conclusion I beg to quote from the book: "Federal Criminal Law" (by William E. W., page 56, par.7), where it says, under the heading: "Evidence against himself":

"This regulation of Amendment 6 according to which nobody may be forced to give evidence against himself in a trial, is not restricted to the defendant. It is a prerogative which can be claimed by any witness. There is nothing more barbaric than to enforce such disclosures which are apt to humiliate and convict the person who was forced to make them."

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cc) Dr. v. SCHNITZLER was not told either in 1945 or in 1947 that he is a defendant or that he is to be made a defendant. On the contrary, he was definitely examined as a witness, as is proved by the interrogation records which I have submitted (exhibit SCHNITZLER 28 and 182). In 1945 he was also examined as a witness and he was even given promises in favor of the IG and in favor of his own person.

dd) The defendant v. SCHNITZLER was denied legal assistance in 1945 as well as in 1947. Mr. SPRECHER stated the following (interrogation of 18 February 1947, SCHNITZLER exhibit 26, Document Book II, pages 17 and 25):

"As long as such accusations are not brought against you or in so far as no charges are made against you, the accusatorial law of procedure applied here does not entitle you to legal assistance."

In this connection I wish to refer to the principles of American rules of procedure which I quote from an article: "The Federal Rules of Criminal Procedure" by Lester B. ORFIELD and which are contained in a bill of 1945:

"The Commissioner is to inform the defendant of the complaint against him, of his right to retain counsel, of his right to a preliminary examination, and that he is not required to make a statement and that any statement made by him may be used against him. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules."

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ee) In an inadmissible manner it was pointed out to the defendant that every German is obliged to make a statement before allied agents on the basis of a provision contained in Order No. 1 and the proclamation of the Control Council No. 2, article 45 (Exhibit SCHNITZLER No. 27), which, however, do not apply to legal proceedings. In examining the defendant von SCHNITZLER Mr. SPRECHER reportedly referred to the "Rights of the Powers of Occupation" and stated the following:

"Pursuant to the law of occupation after cessation of hostilities you, as a member of the occupied country are furthermore required to cooperate with the occupation authorities according to appropriate demands made on you. You will first take the oath and then I will put the questions to you."

ff) In 1945 the defendant von SCHNITZLER was subjected to physical and mental strain in the course of interrogations at Frankfurt which lasted for months. In his interrogation on 11 May 1948 the witness Paul HUEFLINGER describes the incredible and disgraceful conditions under which the gentlemen of the IG, including Herr SCHNITZLER, were detained at the penitentiary of Preungelsheim. One evening a corporal LUCKMANN ordered the detainees belonging to the IG to be lined up in front of the cells and stated that he was going to treat them as war criminals. He said the following:

* "The Commissioner is to inform the defendant of the complaint against him, of his right to retain counsel, of his right to a preliminary examination, and that he is not required to make a statement and that any statement made by him may be used against him. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules."

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"I am looking forward to the day when you will be hung on the highest tree in the court yard, especially you Herr von SCHNITZLER. Did you understand? Did you grasp this?"

He then stated that the detainees would no longer receive a hot meal, inquired of each one about 'his son' showed malicious satisfaction at the reply that he was killed during the war. To Frank-Fable he said:

"Do you have a son?" "Yes, he is two years old."
"What a pity that he is not older and that he was not shot as well."

I do not wish to mention any further details since the tribunal will recollect the moving descriptions given by FAEFLIGER. It only seems to me of importance to refer to the statement of the witness that as a result of the treatment received there, Schnitzler spent hours lying impassively on his hard bunk and I furthermore wish to point out that the interrogators were aware of the treatment in the penitentiary. For the corporal stated that the interrogators were not satisfied with the statements made by the detainees, that the latter were jointly liable for obtaining better results and that as a first measure the rations would be reduced immediately.

FAEFLIGER himself was threatened by an interrogator Mr. SACHS with extradition to Russia because he is a Swiss citizen, and another interrogator, Mr. WEISSERODE, was dissatisfied with his statement and said that "there were also other means of refreshing his memory."

In this connection I only wish to mention the affidavit of Frau von Schnitzler (Schnitzler Exhibit 30), which reveals that Frau von Schnitzler was arrested by the above mentioned Mr. SACHS whom she tried to see her husband on 16 June 1945 and that she was treated

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disgracefully while under arrest. The effects on Schnitzler's psychological condition are quite plain.

25) By the submission of interrogation records I furthermore proved that duress was also exercised on occasion of interrogations in Nuernberg, namely by Mr. Sprecher. In judging the interrogation record it must be considered that in the course of the interrogations the representative of the prosecution learned of the conditions under which the statements were made in Frankfurt and that he, despite that fact, conducted his interrogations on the basis of these statements and induced Schnitzler, by frequently pointing out the danger of perjury, to confirm his former statements in their essential parts. The interrogation records I submitted (Schnitzler Exhibit 2) speak for themselves, and I believe that, considering all circumstances as well as Schnitzler's compliant nature, it is quite evident, how he must have been affected mentally by repeated references to his statements of 1945 - reminding him of the terrible conditions of 1945 - and furthermore, by Mr. SPEECHER's exaggerated statements concerning the severe punishment for perjury. Thus Schnitzler was led to believe that he was under no circumstances to mend important parts of his incorrect statements of 1945 since in that case the representative of the prosecution would then indict him for perjury on the basis of his former statements. It also seems particularly significant that Mrs. SPEECHER made the following statement, among others, on the occasion of the first interrogation,

"Same punishments for perjury may be more severe than those for participation in the German militarization."

I should like to confine myself to these brief statements and for the rest I refer to the records and the documents submitted as evidences. (Record of 10 May 1948 and Schnitzler Exhibits 28 and 182.)

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Emerson's wordings in the affidavit show that SCHWITZER was in an extremely compliant and desolate mood during these interrogations, quite apart from the fact that many of the incriminating expressions are not confirmations of facts but only conclusions which the Prosecution suggested to the so-called witness, taking advantage of his unbalanced psychological condition and his compliant character.

Count II of the Indictment (Spoliation).

20.
Your Honors,

I now wish to deal with Count II of the Indictment in which the Prosecution deals with those cases where the I.G. engaged in industrial activity of any kind whatsoever in the areas occupied or annexed by Germany during the war. The Prosecution describes every case of industrial activity in the occupied territories as plunder. Within the I.G. Dr. von SCHWITZER was the commercial manager of the dyestuff division which, before the war, accounted for approx. 1/4 or 1/5 of the I.G.'s total turnover. In accordance with SCHWITZER's position I had to deal factually with those cases in the evidence which were connected with the dyestuff field, i.e. the cases of Francolor, as well as a small dye factory in Alsace-Lorraine and the three Polish dye factories Boruta, Wola and Pinnica. On top of that I dealt with the legal aspects of this subject, both in common and international law, in accordance with an internal agreement of the Defense, so that my statements are of importance to the whole

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Defense in that respect, in other words, also to those cases which do not deal with the dyestuff field and therefore do not deal with SCHNITZER, namely the cases Rhone-Poulenc, Gorsk-Hydro and the Oxygen Plan in Alsace-Lorraine in particular.

The legal judgment of the cases of spoliation is extremely difficult as neither in the laws, nor in the literature, nor in the verdict of the Ruernberg trials so far concluded, nor in the indictments and the Trial Briefs of the Prosecution, are there any clearly formulated definitions of terms regarding either penal or only international law. If, however, the Tribunal is to ascertain a personal criminal guilt on the basis of the I.N.T. verdict, then the defendant must have known and been aware of what was forbidden by penal law and what was permitted at the time of the deed. However, precisely this is not the case.

21.

1. In this trial private industrialists are made to account for economic measures which they carried out in occupied territories at the instigation of their government, or, in the case of contracts with foreigners, with the approval of their government. Neither the German Penal Code nor the provisions of the Hague Convention stipulate that a private individual has to check the actions of his government and is responsible for its keeping the provisions of International Law. As regards this I wish to refer to my statements in the first part of my plea and would only add to them that, according to the opinion hitherto prevailing, a private industrialist could not have got the idea that he, as a private person, was entitled, or even under an obligation, to check the admissibility of economic ordinances issued in the

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occupied territories, and that he was not in a position to get a clear conception of such difficult questions.

22.

2. During the 34th Conference for International Law held at Vienna from 5 to 11 August 1926 - the records were published in London in 1927 - a participant asked about the responsibility in International Law of a private person,

"Suppose I were the defendant how should I know what I should have done and what I should not have done? ... I do not know what the Public Prosecutor is going to say to me. He starts and says: You did this, this and this. I say: There is the paragraph which forbids me to do this! And he says: there is no paragraph, but a public opinion of all the lawyers in the world. I say: as I am no lawyer and have never read a juridical book, I can not know that.

Thereupon Lord Phillimore replied:

"A man must be charged with a definite crime. Nobody doubts that."

This principle, that the defendant must be charged with a legally well-defined crime, applies in all civilized countries. Contrary to this principle, the Prosecution has not even attempted to define the term spoliation. In the indictment they merely refer to paragraph 2 of the Control Council Law No. 10 and state in general terms that the defendants participated "in the theft of public and private property, its exploitation and spoliation, and in other offenses against private property." Reference to the Control Council

Law is no proof however, because there only "crimes against property committed in violation of the rules and customs of warfare" are mentioned, and spoliation of public and private property" is given as an example. Thus in this case, too, there is merely a reference instead of a definition, i.e. the reference to the customs and rules of warfare. However, no clear definition can be found for these rules and customs of warfare regarding spoliation. The main source is the Hague Convention of Land Warfare of 1907 and according to the IMI-judgment, in agreement with general doctrines of international law, the international common law, that is to say that law, which every person with moral sense recognizes as the legal norm and which therefore has become customary. In the "Hague Convention of Land Warfare the pertinent rules can be found in chapter 3 of the supplement under the heading: "Military powers in occupied enemy territory and thus in articles 42-56. Furthermore the following is stated in the preamble of the Hague Convention of Land Warfare:

"Until a more complete manual for the rules of warfare can be established, the signatories of the Convention deem it advisable to establish, that in cases which are not included in the regulations of the Convention adopted by them, the population and the belligerents remain under the protection of the principles of international law, as resultant from the established customs among civilized peoples, from the laws of humanity and from the demands of the public conscience."

Here, too, we find the same as in the IMI-verdict, in other words, the reference to an uncertain, undefined law, namely that of the "public conscience".

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In this connection the argumentation which the American Military Tribunal offered in Fuerberg in Case No. 3, the Justices Case, seems to be very important, i.e. regarding the law which Hitler promulgated on 28 June (Reich Law Gazette 1935, part 1, page 639 and following). Article 2 of this law reads:

"Anyone committing an act which the law declares to be punishable, or which deserves punishment according to the principle of a penal law or the sound sentiment of the people, will be punished. If no definite penal law is applicable to the act, then the act will be punished according to the law, the principle of which is most applicable to it."

The American Military Tribunal makes the following comment on the text of this law issued by Hitler:

"In principle this decree represented a complete departure from the rule that penal laws should be unequivocal and definite, and it left to the judge a wide margin for his opinion, in which party-political ideologies and influences took the place of the rules of law as a guiding principle for the judge's decision".

I believe that a parallel can be drawn here between Hitler's law and the Control Council Law, i.e. a parallel regarding the complete uncertainty and the faulty definition, the only difference is that the "sound sentiment of the people" has been replaced by the "public conscience" according to the Control Council Law and the Hague Convention for Land Warfare.

I do not want to be misunderstood, and therefore I should like to point out that I am merely thinking of the facts which are of interest in this connection and which the Prosecution summarized under the term "spoliation", and not, of course, of the term "spoliation" in the strict sense of the word, or, as was stated in the judgment of the Flick Case, of "spoliation in the usual sense of the word", which did not play any part in the Flick Case or in the I.G. Case and of which the National Socialist leaders, such as Goering and Frank, were guilty by the confiscation of art treasures; the

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definition of this type of spoliation is given in a concise form in the Hague Convention for Land Warfare under article 47:

"Spoliation is expressly forbidden".

What makes the legal judgment of the industrial trials so difficult is the fact that the Prosecution simply brands any activity of an industrialist in the occupied territories as "spoliation", regardless of whether this activity was carried out in the interest of the economic power of Germany during the war or in the interest of the economy of the occupied country.

It is immensely difficult to give a clear definition, on the basis of the Hague Convention for Land Warfare, of the rights of an occupying power. This difficulty arose already in the Flick Case, and led to countless arguments and finally to the definite establishment in the judgment that in any case the activity of an industrial trustee or lessee could not be regarded as spoliation. Unfortunately the Prosecution was in no way influenced by this judgment.

23. 3. According to article 46 of the supplement of the Hague Convention for Land Warfare, private property must not be confiscated. According to article 53, the occupying power may confiscate any stocks of war material, even if they are owned by private persons. There are no special rules referring to immovable private property and privately owned industrial enterprises and factories, with the exception of the preamble, which on the one hand refers to the demands of the public conscience and on the other hand to the military interests of the occupying power. It is not surprising either, that no ruling can be found in the Hague Convention for Land Warfare for the case in the industrial sphere which in this case are the subject of the argument.

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 CERTIFICATE OF TRANSLATION

2 June 1948

We, the undersigned, hereby certify that we are duly appointed translators for the English and German languages and that the above is a true and correct translation of Final File Schmitzler.

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" END "

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For in the period prior to 1907 neither economic warfare nor total warfare was known in warfare of the last century. The total character of modern warfare comprises the entire economy and the civilian population and thus necessarily also private property. The Hague Rules of Land Warfare contain rules for the military occupation only. They contain no rules for the economic warfare apart from the one restriction providing that the demands of public opinion should be taken into consideration and the sufferings caused by war should be mitigated to the extent permitted by the military interests.

It follows from the above that with regard to private property the provisions of the Hague Rules of Land Warfare of 1907 cannot be applied literally. Every law, and thus also International Law, depends on the historical development which may lead to an extension or a limitation. Accordingly, the International Military Tribunal said verbatim regarding International Law:

"This law is not rigid but by constant adaption follows the requirements of a changing world."

It is on the same line when the U.S. Military Tribunal II in the Flick judgment stated:

"The purpose of the Hague Convention, as disclosed in the preamble of Chapter II, was 'to revise the general laws and customs of war', either with a view to defining them with greater precision or to confine them within such limits as would mitigate their severity so far as possible. It is also stated that 'these provisions, the wording of which has been inspired by a desire to diminish the evils of war, as far as military requirements will permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants'. This explains the generality of the provisions. They were written in a day when armies travelled on foot, in horse drawn vehicles and on railroad trains;

the automobile was in its Ford Model T stage. Use of the airplane as an instrument of war was merely a dream. The atomic bomb was beyond the realm of imagination. Concentration of industry into huge organizations transcending national boundaries had barely begun. Blockades were the principal means of "economic warfare". "Total warfare" only became a reality in the recent conflict. These developments make plain the necessity of appraising the conduct of defendants with relation to the circumstances and conditions of their environment. Guilt, or the extent thereof, may not be determined theoretically or abstractly. Reasonable and practical standards must be considered.

I need not add anything to these trains of thought; they unequivocally show that the Hague Rules of Land Warfare can only be applied according to their inherent intentions taking into consideration their basic principles.

If it is, however, intended to apply the Hague Rules of Land Warfare literally, as is being done by the prosecution, and to regard every agreement and every measure referring to the private property of an occupied territory as an offense under International Law or even as a crime under International Law, then the air-raids of the German and Allied airfleets are definitely unequivocal war-crimes, since Article 25 of the Hague Rules of Land Warfare provides:

"The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited".

I leave it to the prosecution whether it wishes to draw these cogent conclusions. At any rate, the case is very much more complicated with regard to the utilization of economic enterprises, i.e. with regard to spoliation according to the Prosecution, than with regard to air warfare. For here economy is involved which during the three decades from 1907 until the outbreak of World War II had fundamentally changed. The fact involved is that World War II no longer was a purely military war, but

a total economic war with the result that the economic necessities and the economic interest could no longer be separated from the military necessities and the military interests mentioned in the Hague Rules of Land Warfare. It was total economic warfare by which the industrial plants of the belligerent countries were implicated in the war and thus, necessarily, also in the "military necessities" of the Hague Rules of Land Warfare.

For this reason, not every interference with private property can be regarded as prohibited much less as a war crime. It will merely be necessary to see to it that with the measures regarding private property the interests of the belligerent country do not exceed any reasonable limits. Likewise, it will be necessary to see to it that, in conformity with the laws of humanity and the demands of public opinion sufficient consideration is given to the economy of the occupied territory and to the resources and the economic forces of the industries there. This, however, was proved in all instances by the case-in-chief; I.G. Farben gave consideration to the economic interests of the population of the occupied territory and in all instances supported the manufacturing enterprises in technical and economic respect. If it is intended to find out whether the ideology of International Law is complied with, then the economic situation and the economic development of the plants involved during the war should be examined in all cases. The Defense did so, and I believe that the case-in-chief has given the Tribunal the impression that in no case the economic interests of the individual plants were prejudiced in any way, insofar as the German military and economic interests permitted this.

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24. 4) These economic considerations are, in addition, supported by the Hague Rules of Land Warfare, by an article which time and again is intentionally avoided by the Prosecution in all industrialists' trials. In the Indictment (page 71, section 119) it refers to articles 46 to 56 of the Hague Rules of Land Warfare, although the section involved which refers to conduct in the occupied territories, does not begin with Article 46 but with Article 42. I am thinking of Article 43 which reads as follows:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country".

Public order and normal conditions can, however, only be restored or maintained in the occupied territory if the industry of the country operates smoothly. This provision of the Hague Rules of Land Warfare thus entitles and obliges the occupation power to take charge of the economic enterprises of the country and to administer the country under proper conditions. The importance of this article becomes especially clear if it is borne in mind that in innumerable cases at the moment of the occupation of the country industrial plants were abandoned by the owners or the managers of the plants and had stopped operation. Surely much too little attention has been paid up to now to the necessary consequence that in a modern war the provision of Article 43 frequently overlaps articles 46, 52 and 53. For from these three articles the Prosecution tries to infer the prohibition altogether to concern oneself with an economic enterprise in the occupied territory, whereas

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article 43 which was left out of consideration by the Prosecution contains the obligation and thus also the authorization to interfere with the economy of the country. It is obvious that it will not always be simple to find the right limits and it is just as plain that a private industrialist cannot be required by himself to discern the limits of this provisions.

25) The consequences of this legal elaboration to the individual facts of the alleged spoliation are as follows:

(1) In the cases of Transcolor, Bessarabian and Norak Hydro NO GOVERNMENT SALES according to the Hague Rules of Land warfare are involved. On the contrary, agreements were involved which I.G. Farben concluded with private owners in the occupied territories. There is, however, not a single provision in the Hague Rules of Land warfare prohibiting the occupation power, much less the individual industrialist, from carrying on economic negotiations with the resident of the occupied territory and to conclude economic agreements. These agreements thus cannot at all violate laws of war, since there exists no corresponding prohibition in criminal law either definitely expressed or implied by the Hague Rules of Land warfare. Just as little can they constitute a violation of the Control Council Law because the Control Council Law explicitly only mentions violations against property under a violation of the laws of warfare, thus is based on the condition that there exists a violation of the laws of warfare. This was obviously felt by the Prosecution before the Defense had proved the faultless economic form of the agreements. Since in its Trial Brief (Part II, Section 5) it uses formidable words

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in order to prove these agreements to have been criminal. It says: "It is ~~clearly~~ drive against the country in question, as it tears asunder its economic set-up, estranges its industry from its natural aims and forces it to serve the interests of the occupying power and interferes with the natural collaboration between the isolated industry and the local economy."

However, this was exactly what the prosecution was unable to prove in any way with reference to these three agreements. They never got beyond the stage of empty words. The economic set-up was not torn asunder, nor was the industry estranged from its natural aims. On the contrary: The defense has proved, through a considerable number of documents that the industry in question could go on serving its natural aims only because of these agreements with the I. G. Farben and it has also proved that the economic set-up was preserved.

In the cases Rhône-Poulenc and Volk Hydro I am referring to the allegations and evidence presented by Messrs. Dr. Bernitz, Dr. Rich and Dr. v. Metzler. By I will refer reports about the case of the color case, that I cleared up the state of affairs in my representation when I was acting as a defense counsel for Schnitzler.

The French dye-industry which came into being during the first world war partly by confiscation of German dye-works in France, was economically closely linked with the I. G. Farben by the German-French Trust-Agreement (deutsch-französischer Kartell-Vertrag) of 27 April 1929 and 15 May 1927 respectively. Because of its economic and technical value the I. G. Farben had held a leading position already in this trust-agreement (Schnitzler Exh. 225) and the "claim for leadership" (Fuehrungsanspruch) made by Schnitzler and the I. G. Farben in 1940, and objected to by the prosecution, was based on it, in spite of the fact that in the treaties when this trust-agreement came into being, the political superiority must have rested

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with France and not with Germany.

These facts caused the gentlemen of the French dye-industry already in August 1940 of their own accord to resume contacts with the I. G. Farben which had been temporarily disturbed by the war, by way of the German-French scientific-commission, and they induced Dr von Schnitzler on the one hand and A. Frossard on the other to get into touch with each other via the Swiss dye-industrialist Knechlin in October 1940 (Schnitzler Feb. 49 and 219).

Considering the time I am allowed for this plea it would be vain, too far to refer to details from my documentbooks and from witnesses' statements. It is, however, important to state that this very extensive argumentation gives a very convincing picture which shows that continuous negotiations on a purely economic basis were carried on by the French dyeindustry and the I. G. Farben in which the French government took a more active part than the German government with the effect that, as is usual in far-reaching economic agreements, both of the parties made concessions to the other party and in the end an agreement was made which enabled the French dye-works to do excellent work during the whole war under purely French management and with financial and technical help on the part of the I. G. Farben, an agreement which was termed "ideal" by the president of Francolor on the occasion of the signing of the contract on 16 November 1941 in front of all important French dye-industrialists, as it was supposed to combine in a superior way the interests of both parties.

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It must also be mentioned that the French dye-industry was given a production-quotient of 7 000 tons by the I. G. Farben which was based on its pre-war sales, over and above the former trust-agreement, - and had, already six months before the signing of the contract received orders from the I. G. Farben based on a permit issued by German authorities for the allocation of raw materials and for the support of enterprises (Schnitzler Exh. 55-57) which had been procured by the I. G. Farben, not to speak of other technical support - already proved in detail - i. e. the permission to use certain methods of production, procurement of new products and so on.

And all this is called by the prosecution, destruction of the economic set-up structure of industry from its natural aim of exploitation, for the sole purpose of supporting its re-researching legal theses.

- 27 Considering the economic success all the rest of the theses of the prosecution are based upon slogans like "Collaborator" "Quisling" pressure and making use of the "atmosphere of general intimidation" because of the "presence of the armed power of the conqueror and the Military Government" must necessarily collapse. The opposite is proved by the numerous documents in my document-books I - V. The various points of the agreement were discussed in long conferences. The I. G. Farben met all the requests of the Frenchmen and the French Government, which had its seat in the unoccupied territory, half-way while the Frenchmen and the French Government complied with the wish of the I. G. Farben for a 51 % shareholding interest a claim on which the I. G. Farben insisted only because, in an organization of equal partnership, considering the superior position of the French president of the company the purely French management, it needed counter balance.

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in case of unexpected violations of the agreement by the French Government, a case which actually never occurred. It seems almost paradoxical to speak of pressure and a condition of constraint when the I. G. Farben treats the claims of the Frenchmen concerning the evaluation of the French capital to their full extent and when it does not, on the other hand, base the value of the I. G. Farben-shares upon the 200 % stock exchange rate of that time but, taking into consideration the desire of the Frenchmen, upon a percentage of 160 although the inherent value of the shares is as I proved at that time, even without taking into consideration the secret reserve fund, based on the tax records, was above 300 %. (Schnitzler-exhibits 58-64)

All the documents, especially the agreement, prove that the "presence of the 'real power of the conqueror and the Military Government" had no influence on the agreement. No word need be said about the fact that the industry of every defeated country must find itself in a very difficult position during the time of occupation, and we Germans are the last people in the world to dispute this fact. This can, however, not be decisive, especially as in every war and in every economic capital-interlocking (Kapitalverflechtung) or the setting up of a new business by two competitors, the economically weaker partner must find himself in an economically tight corner or even in a condition of economic constraint. The only question which might be decisive in such a position would be that of whether such a condition of economic constraint had been exploited by other partners in a criminal way for the sake of his own illegal adventures such as in spoliation in the true sense of the word.

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Nothing need be said to show that there is no question of exploitation of a condition of constraint in a contract which was concluded on an absolutely sound economic basis, so that the managers of the French dye-stuff industry confirmed the fact to the French government on 3 October 1941 that in consideration of the cartel agreement of 1927 favoring the French group, "all necessary safeguards have been guaranteed", a contract which was almost unanimously approved in the general assembly of the most important French dyestuff factory RUHLMANN, and through which the French dye-stuff industry became the largest individual shareholder of I.G. Farben, and which caused the French dyestuff factories to regard their participation in I.G. Farben as so favorable that they voluntarily made use of their right to vote upon the acquisition of new stocks in 1942.

Hardly anything need be said in order to be clear about the fact that a contract which would have been drawn up in exploitation of a condition of constraint would have appeared basically different in every point. When a condition of constraint is being exploited, the partner to the contract is not contented with an equal position within the company and does not leave the business management and direction of the company to the exploited and exploited partner.

28. 2. In the remaining cases in Poland and Alsace-Lorraine I.G. Farben acquired the property from the factories in question following official measures which originated by order of the government.

In Poland the legal basis was the decree of the Fuehrer and Reich Chancellor concerning the Occupied Polish Territories of 12 October 1939 (SCHULTZLER Exhibit 106) and the Decree concerning the Administration of the

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newly occupied Eastern Territories of 17 July 1941 (SCHMITZLER Exhibit 2). In both of these laws, the preamble reads:

"In order to restore and maintain public order and public life in the occupied territories..."

Please observe that this text agrees exactly with the text of Article 43 of the HLO, so that an industrialist could justifiably assume that the measures which were taken by the government by virtue of these orders were admissible. Through these orders a civilian administration was set up, and this civilian administration in turn installed German commissioners in the 3 eyestuff factories, Soratz, Loh and Winnier in Poland. These commissioners were made available by I.G. Farben, but Farben did not thereby receive any rights to the factories. The commissioners were responsible solely to the government and the local civilian administration, and were active in their capacity as trustees. It is important to note that these measures were taken by the government in agreement with the preamble quoted above, in order to continue operation of the industrial enterprises in the Eastern territories, which had been abandoned to a large extent by the owners and the managing directors. This was expressly confirmed by the witness, Dr. SCHMITZLER. (SCHMITZLER exhibit 127). Dr. INKLEB was permanent economic trustee of every German government since 1920 and is the person who has the best over-all command of economic problems in the East. He confirms that the factories continued to be run "in the interests of the economy of the occupied country and of the German Reich." This is the basic reason which I mentioned in my legal statements regarding Article 43 of the HLO, which contains the collection for the occupying power.

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to continue to open to or to set in operation the factories of the occupied territory.

The legal basis with respect to the 3 French factories in Poland is thus in full accord with the Law, so that I.G. Farben neither needed to have misgivings about making commissions available to trustees, nor did it need to have misgivings about concluding agreements with the civilian administration about the factories. In particular there is the additional economic factor that from as early as 1934 there had been a close economic connection between the dyestuff factories located in Poland, the French dyestuff factories I.G. Farben, and the Swiss dyestuff factories, on the basis of an agreement between the Polish group and the Tripartite Cartel. (SCHMITZ Exhibit 207).

With respect to the further development during the war, the 3 dyestuff factories must be regarded separately:

29. With reference to the Winnicki, the League Rules of Land Reform cannot be applied at all, because the Winnicki is not a Polish-owned dyestuff factory. But according to the Control Council Law and the League Rules of Land Reform, it must be private property which belongs to a citizen of the occupied country.

The Winnicki, like even the evidence of the prosecution shows, 50% to I.G. Farben and 50% to the French dyestuff factory Winnicki. Accordingly, the German civilian administration also suspended the original confiscation of the Winnicki, because it was not Polish property (SCHMITZ Exhibit 221). Accordingly, I.G. Farben also did not require the 50% belonging to the French from the German civilian administration, but by

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agreements with the KURIMANN Firm, Paris. Thereby the factory was wholly the property of I.G. Farben, so that it is not at all clear how the prosecution can speak in favor of spoliation.

Moreover, this is also corroborated by the fact that in the cartel agreement of 19 November 1934 the Winnice is not quoted as a part of the Polish group, but as a member of the Triple Cartel, to which I.G. Farben belongs, let it be said merely for the sake of completeness, - even if it has no legal significance - that the KURIMANN Firm was very happy when it could sell its participation in the Winnice to I.G. Farben during the war, because as a result of the collapse of the Polish state, the Winnice was exposed from the beginning on to the danger of shutting down.

30. b. The Winnice is just as uninteresting with respect to international law, for the simple reason that I.G. Farben neither bought the Winnice, nor acquired any other rights to it. The fact that commissioners were appointed as trustees by the German civilian administration is a matter for the government office, but not for I.G. Farben.

31. c. The 3rd factory, Beratz, was at first also administered by commissioners, who were acting as trustees for the civilian administration and not for I.G. Farben, as the prosecution contends. Moreover, the Main Trustee Office East, directed by Dr. WINKLER, was brought in here by legal measures. The creation of the Main Trustee Office East was based on the basic ideas contained in Article 43 of the AG, that the

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Economic enterprises should be continued in operation. Accordingly, the Main Trustee Office East and/or the commissioner appointed by it endeavored to continue the factory in operation. The witness SCHWAB, who was employed as a commissioner, and Dr. WINKLER, stated, however, in full agreement that the continuation of the factory in operation was endangered owing to the general economic difficulties (division of Poland into a German and a Russian part) and owing to the special difficulties in chemical plants. It proved to be necessary to invest large amounts, to call upon chemical experience and in this particular special chemical area the knowledge and methods of production of a large technical firm like I.G. Farben. At first a lease contract was considered. However, the Main Trustee Office East, at which the matter was being handled by 2 recognized experts, on its own initiative made the suggestion of selling it to I.G. Farben, because it not only felt obliged to have the factories running in the interests of the public economy of the country, but also felt obliged to preserve the capital of the enterprise. The Main Trustee Office East therefore made use of Par. 7 of the Order of 7 September 1940, according to which in special cases a sale may take place, in order on the one hand to prevent the factory, and on the other hand to rescue the capital.

I might insert here that this is an idea which is in complete accordance with the administration by trustees and thus also with the Hague Rules of Land Warfare, and especially in consideration of Article 43. Furthermore, I call attention to the fact that for example the custodian of an industrial enterprise appointed by the British Military Government is justified in exceptional cases, from the same economic standpoint, in selling.

(SCHWITZLER Exh. 122).

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The peculiar thing about the case of Beratz was, as confirmed by Dr. SCHNITZLER, that an investment of 5 million Reichsmark was required to secure the continued operation of the plant. But this amount exceeded what could be raised by a custodian, and it could not be expected of a lessee either, since this investment sum was the exact equivalent of the sales price. As to the sales price it is of interest to note, so as to round off the picture, that the value ascertained according to the rules usually applied in the dye business amounted only to 3.2 million Reichsmark, whereas the Reich in Trustees Office had computed a value of 5 million Reichsmark in the interest of the Polish proprietors, and that the I.G. Farben through Dr. SCHNITZLER without objections declared their willingness to pay the higher sales price.

32. In Alsace-Lorraine there are two cases, namely the dye-stuff plant in Mulhouse, and the oxygen plant in Strassbourg-Schiltigheim.

The facts of these two cases are similar due to the circumstance that both plants are situated in Alsace-Lorraine, and that the German Reich following the conquering of France practically incorporated, i.e. annexed these territories in distinction to other occupied territories. According to documents introduced by the Prosecution itself the Chief of Civil Administration in Alsace took over French property located there as property for the benefit of the German Reich, through special government order of transfer dated 13 July 1940 applying to the dye-stuff plant in Mulhouse (appendix to Prosecution Exhibit 1216 in Volume 61, p. 45) and dated 10 August 1940 applying to the oxygen plant in Strassbourg (appendix to Prosecution Exhibit

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1235 in Volume 62). At first the chief of civil administration as commissioner general for enemy property appointed an administrative custodian and in the spring of 1941 the latter leased the plants to the I.G. Farben. Later - in July 1943 and January 1944 - both plants were sold to the I.G. Farben by the chief of civil administration.

According to this it is a fact that at the time of the lease agreements as well as at the time of the sales agreements French property had already been confiscated for a longer period and taken over by the German Reich with property rights. When the I.G. Farben became involved, - if it happened and already been established; the set of facts which the prosecution views as plunder originated from an act of the government exclusively in which the I.G. Farben in no way took any part. The question whether the opinion of the German Reich that it could take over French property in the annexed Alsace-Lorraine as enemy property is justifiable is open to discussion. For even if the German Reich by this act clearly violated the Hague Convention of Land Warfare, the I.G. Farben did not participate in this violation of international law or in this criminal act, especially since it had no connection of any nature whatsoever with the custodians. The offense of the government was completed already in July or August 1940 through the taking over and/or confiscation of property, so that the subsequent lease and sales agreements from the years 1941 - 1944 cannot constitute a participation and for this reason already do not come within the scope of the Control Council Law or the Hague Convention of Land Warfare. Whether the agreements are legally valid because the I.G. Farben had made a purchase from the German Reich acting in good faith on the assumption that the German Reich had power of disposal, that is a question of civil law, and a possible negative answer to this question is immaterial viewed under the aspect of criminal law.

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Far, from the point of view of criminal law, the French had already been deprived of their property, they were not deprived of it only through the complicity of the I.G. Farben.

As for the rest, the economic points of view set forth in Article 43 of the League Convention of Land Warfare are of particular importance in this connection; for the fundamental ordinance concerning "regular business management and administration of enterprises and factories in the occupied territories" of 23 June 1940 (Prosecution Exhibit 1213, Volume 51) provides as follows:

"In order to secure the supplies of the population in the occupied territories it is required that the entire economy be kept in operation as far as possible. This implicates in particular that the regular business management and administration of enterprises and factories will be secured."

The I.G. Farben therefore rightly assumed that its action was in accordance with the League Convention of Land Warfare when supplying the proper professional management of the plants, because the continued operation of both plants was necessary in the interest of the occupied territories, in the case of the oxygen plant even of decisive importance.

Further, the I.G. Farben expressly bound themselves in both agreements to retain workers and employees of the firm and in the interest of the industry of the occupied territories bound themselves to invest considerable amounts of capital.

As to details of the economic aspect of the case I refer, concerning the oxygen plants, to the exposition of Dr. FRIBILLE and concerning the dyestuff factory to the statement of Dr. MERKS (transcript p. 8109) and in particular of Dr. TER MEER (Transcript p. 133778) who rightly points out that when the agreements were concluded there was no possibility of making any payment to the former French proprietors, exactly because of the fait accompli established by the German Reich as mentioned by me. TER MEER further states that

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he completely concurred in the opinion of Dr. von SO WITZLER that the I.G. Farben would bring this plant belonging to the dye-stuff group of the French friends through the war, and that they agreed with the representatives of the Prosecutor that they would settle these things when the peace had been concluded. The French Messrs. FASSAHL and LUCHEUX welcomed the prospect of their factory coming under the custody of the I.G. Farben so that workers and employees were taken care of, in a silly understated view, since they knew that the factory would be kept better in the hands of the I.G. Farben than in the hands of the National Socialist government.

In consideration of these legal and factual points of view the opinion of the Prosecution that this constitutes a war crime seems beyond discussion.

I hope to have made it clear that the industrial activity of the I.G. Farben in the occupied territory during the war cannot be made the basis for a criminal charge, and that in no case has the I.G. Farben violated the Hague Convention of Land Warfare, still less committed a war crime. But even if the High Tribunal should deem that in some case or the other an objective violation of the Hague Convention of Land Warfare was committed I request that the following points be considered.

33. a. An objective violation of an international agreement, in conformity with the conditions of civil economic law, is not yet a punishable offense. A punishable offense can be inferred only when a personal criminal guilt has been established. But a personal guilt is here certainly lacking because the defendants could not be expected to be fully oriented as to the legal situation or the complicated provisions of the Hague Convention of Land Warfare. In general the industrialist

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by looting and plunder would understand looting or plunder only in the literal and not in the figurative meaning. It did not at all occur to the industrialist that that it would constitute a criminal act when he by agreement participates in another enterprise, or when he leases or buys an enterprise of the government and pays a reasonable rent or sales price. In so far as allowed to refer to the fact that the Prosecution in no case has proved or even alleged that the rent payments or the sales prices were not reasonable, on the contrary, in various cases it admitted that the payments were reasonable, and the Defense has proved this in all cases.

34. b. Control Council Law No. 10 in Article 2 mentions only "plunder of public or private property", in other words only plunder in a more restricted literal meaning.
35. c. The Control Council Law in Article 2, 1b exemplifies "war crimes" by enumerating grave criminal acts only, such as murder, ill-treatment of prisoners of war and civilians, killing of hostages, arbitrary destruction of town or land, and devastations that are not justified by military necessity. In all cases the Control Council Law as examples enumerates only actions that are considered grave crimes in the criminal codes of all civilized nations. Therefore it is contrary to the spirit of the Control Council Law if the Prosecution will label any, even any relatively slight violation of the League Convention of Land Warfare a war crime.

36. d. As already specified before, allowances must be made for the defendant in so far as international regulations have only partly been codified, and that neither the Hague Rules for Land Warfare nor other literature interpreting international law provide any clear and precise definitions. In one word: The fact has emerged that basic legal concepts are uncertain and rather indefinite. Even a specialist in the field of international law could not possibly explain to an industrialist quite unambiguously which actions, during the war, were permitted or prohibited in occupied territories. How difficult it is to clearly recognize such limitations can be seen especially by the events in Germany after the end of World War II. What has happened in occupied Germany since 1945 violates numerous rules of the Hague Land Warfare Regulations, and this applies to all four occupied zones irrespective of the fact whether the Hague Land Warfare Regulations are interpreted, literally which is the viewpoint of the prosecution, or whether they are applied in accordance with their spirit, and under consideration of modern war conditions and the economic warfare.

In this case action I have submitted such evidence, contained in 3 document books, which however was largely rejected by the High Tribunal as evidence, because the facts refer to factual elements after 8 May 1945 and do not fit in with the factual elements as laid down in the indictment. At the same time, however, all the above mentioned evidence was given identification numbers and I was permitted to submit the material for my argumentation. Briefly, this material shows that the Allied Occupation Powers have violated the Hague Land Warfare Regulations; it also shows how conflicting all basic concepts of international law are at present. Although one might like to criticize the various measures of the Allies with regard to dismantling and the confiscation and seizure of private property, it would be impossible even for a legally trained person

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to single out those measures which are permitted or prohibited respectively. Any of the Allied measures directed against German industry conform with the rules of the Hague Land Warfare Regulations, according to which only war material and characteristic military booty is to be confiscated and seized in various factories. However, just as many measures intentionally ignore the Hague Land Warfare Regulations and, consequently, even factories which were solely manufacturing peace time goods were seized, although there cannot be any doubt whatsoever, according to the Hague Land Warfare Regulations, that any such private property should be exempt from seizure. And finally, there are also those dismantling orders which, except, as a matter of form, to observe the Hague Land Warfare Regulations which, however, in actual fact should be considered as plundering of private property, if the prosecution interpretation is applied.

I would like to refer to the instance in the British Zone, where a factory producing tool machinery received a production license (production permit for industrial plants), and where dismantling, packaging and shipping of factory installations was designated as production branch in the Hansa Schnitzler Ident. No. 128; then, in accordance with this license specification, the license was only executive for the time of the actual dismantling.

I want to mention also when, as a restitution, measures were taken at the value of 5 million Reichsmarks as taken away from Krupp's "Booty" in accordance with the Hague Land Warfare Rules, although according to Control Council Law No. 53 scrap iron does not fall under the designation war material; but in this case military government was of a different opinion by referring to a British Headquarters definition, dated 5 June 1945 (Schnitzler Ident. No. 135), according to the Control Council Law (Schnitzler Ident. No. 136), scrap iron does not come under war material, because scrap iron

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can be used for peace production purposes. In Westphalia, the bomb factory was dismantled following an official disarmament order and handed over to the British competition file.

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which was owned by a member of the investigation commission in the occupied territory (Ident. No. 134).

A foundry in the Rhineland, valued at ~~least~~ 50 million Reichsmarks, was dismantled and was appraised by the Inter-Allied Commission at 15 million Reichsmarks, while the dismantling expenses which had been paid by the firm concerned amounted to at least 20 million marks (Schnitzler Ident. No. 137).

A factory for compressed-air instruments and machinery was likewise leased to the Trassluft-Werkzeug- und Maschinenbau A. G. of Berlin, which is owned by Americans; this deal was effected with the help of an agent of the Property Control office and the Director of the subsidiary of the American firm. The license to continue production, which had already been given, was then transferred to the American owned concern (Schnitzler Ident. No. 130).

I have submitted documents concerning dismantling of special factories with peace production potential that constitutes a paramount necessity for maintaining the standard of the German economy. I have also submitted the official dismantling list, which does not require any comment as well as excerpts from the recently published essay of Senator H.assen from Bremen, a thorough and painstaking study, according to which Germany's payments to the Allies amount to 71 billion dollars up to date.

Furthermore, I have submitted a letter of the British Commissioner for North Rhine-Westphalia, W. Astbury, directed to the Oberbürgermeister of the city of Essen, in which Gerald Robertson states concerning the Hague and Geneva Rules as applicable in the occupied Germany territory "Based on the supreme authority which they have been given (the Allied Occupation Powers), there are no limits to their powers, except those limits which they might impose upon themselves." (Ident. No. 118).

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Nevertheless, in the Senate General Clay stated that a further reduction of German industrial plant would probably contribute to the economic recovery of Western Europe (Schnitzler Ident.No.139).

In American German and Japanese property was sold. It was stated in Washington that such sales did not violate international law, an opinion which at any rate contradicts the concept of the prosecution as represented here. (Schnitzler Ident.No.157)

And finally I would like to remind you of Control Council Law Number 3, which I have submitted, concerning the "confiscation and control of property belonging to the I.G. Farben industry (Exhibit Schnitzler 114), which was passed on 30 November 1945, and the preamble of which gives the following reasons:

"In order to make it impossible for Germany in the future to threaten her neighbors or to endanger world peace, and considering the fact that the I.G. Farben Industry was engaged consciously and predominantly in expanding and maintaining the German war potential

From a legal point of view I consider it particularly important that this law which, contrary to the Hague Land Warfare Rules, decrees the confiscation of private property was enacted at a time before the above mentioned conditions were established by a court of law, and before even an indictment was made.

In order to illustrate certain legalistic points, I have submitted the Morgenthau Plan (Ident.No.111) which, according to the now published memoirs of the American Secretary of State Cordell Hull, played an important part at the historic Quebec Conference in September 1944. In connection with the Ruhr area a passage therein states, in direct contradiction to the Hague Land Warfare Rules:

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"Here, we are dealing with the heart of the German industrial potential. It is our contention that not only should this area be stripped of all the industries which it contains, but it should also be weakened and supervised to such a degree that it will not become an industrial area for a considerable period to come".

In the Directives of the Allied Chief of Staff for General of the Army Lucius D. CLAY (J.C.S. 1067) which were published in April 1945 (Ident. No. 111), the following instructions were handed down:

"No measures are to be taken aiming at an industrial rehabilitation, nor must any steps be taken which might be conducive to maintaining and strengthening the German economy."

This unmistakable instruction concerning the administration of German occupied territories also contains an equally as unmistakable violation against Article 43 of the Hague Land Warfare Regulations.

Legally it is particularly important that in July 1947 part of this official directive was supplanted by new directives from the American government to General Lucius D. Clay (Ident. No. 116) which, contrary to the JCS 1067, coincide in numerous points with the Hague Land Warfare Rules.

The prosecution is quite familiar with the events of the past three years in occupied Germany, and they know full well that the facts, as sketched by me, constitute "Spoliation of private property" as interpreted by the prosecution and by using my interpretation on its use of that term, and that this version is so starkly in keeping with the facts that the notions of the defendants in the territories occupied by Germany during the war are completely dwarfed by recent events. German industrialists would have been grateful and happy if, instead of dismantling and the seizure of patents and production processes, agreements such as the Franco-German agreement would have been concluded.

(p. 68 of ori in 1)

the intention of the... the... of... to
this effect... is fulfilled.

2. The fact that there is no longer a central Ger-
man Government is due to the unilateral action of the
victorious powers. The unilateral action cannot be away with
the Government, but the Government, in its official law
as well as in civil law, can be revoked only through bi-
lateral action or through action of the... which is provided
for in the... itself. At such notice of termination
is given, certainly not in the... prescribed by the
... Convention. It is permitted that a occupying
power... its... obligations of the... Con-
vention through unilateral action, in this case through ar-
rest or dismissal of the Government, but the... would
not be thrown... to any circumstances of the
... Convention.

Further, I refer to the... judgment of the inter-
national community, which is expressly recognized by the
... judgment. Even if the... Convention is no longer
in existence as a... its basic principles are still
valid as international law. This is expressly
stated by the... judgment and frequently stated by
the... prosecution is... before the... and that
with... is... consideration... international in-
formation... is... equally to the victors and
to the vanquished.

c. It is... of importance from the point
of view of international law whether there is still a go-
vernment in enemy territory, so that it is... to be inferred
from this that international law is not... where
a Government is... it is... to understand how
the... is... is that international

(p. 69 of exhibit 1)

1 - should have been said by the Germans in Ireland
and in France. For it is not that no overland routes
exist anywhere in the world, as is the opinion of the
British only. There are no overland routes in the world,
in other words it is not that no overland routes exist.

[illegible]

c. The fact that the motion that Germany has not been
acted on by the United States is in the first place
a totally incorrect statement. The fact that Germany was
considered in the United States from the end of 1945 until the
beginning of 1946 was constant at the time and motions
for the very first time at this time have been
made to secure the release of this film in
order to see it in the heart of the group.

(1) a 70 of 1014-1)

[illegible]

... east ... is to ... Germany ... Convention ... it has con-
ducted ...

the Convention... this ob-
jection is the... civilian
population... dismissed
... part from
... such
... to the
... the...
... of the

and at the same time civil war, which
is a crime against the people of the Government.

Conclusions: - 1. In the 5 objectives put forth with
regarding the text of the Convention,
it is desirable. Provision 3 of the Convention
concerns the rules to be observed by the
Coastal Guard in coastal territory. In article 42
it is defined with other elements

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under which conditions the provisions of Article 43 ff. will be applicable. Article 42 reads verbatim:

"territory is considered occupied when it is virtually in the power of the enemy army."

Therefore it is completely clear that the Hague Convention does not contain any prerequisite, and that is the actual occupation of enemy territory. This is shown by the heading of this section which reads verbatim: Military Power in occupied Enemy Territory. The Hague Convention thus does not contain any distinction as to how the occupation of enemy territory was established, whether through actions of force through actual force, or in any other way following the capitulation, or finally in the course of combat following the capitulation. It does not contain any distinction as to whether the territory is still under the control of the enemy army, whether it still exists as a military or not, and neither does it make the distinction as to whether the enemy army is still fighting or has given up its arms. The text and the meaning of the Convention is perfectly clear when it says that the actual occupation of enemy territory. This can be said, however, is fulfilled in an occupied German territory to exactly the same extent as when foreign territories were formerly occupied by Germany.

In this connection I may be allowed to point out that the viewpoint of the Convention is important not only in that it is the basis of the Hague Convention, but, furthermore, in consideration the principles of the Hague Convention with the recognized principles of law, to which, by the way, the Convention is also applicable expressly refers. It says that it is covered by the Hague Convention.

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the regulation of the billiard table is under
the protection of the supremacy of the principles
of international law, as they derive from the
contacts of civilized nations, from the laws of humanity, and from the sense of the public conscience.

The preamble of the League Convention as well as the
the judgment show that public conscience and basic ethical
is a decisive factor in the field of international law
basic ethical principles protect the protection of
the civilian population and the protection of public
order, the protection of economic interests, the pro-
tection of personal liberty, and the protection of private
property. If now it has been so completely defeated
that it had to accept a conditionally, but that no go-
vernment exists, the civilian population is much
more in need of this protection of international law than
when the way of international law has not yet been violated and
the government is still functioning. If the violation of the
protection to the contrary would assert itself in in-
ternational law, this would mean a moral decline and a great
loss for the future. It would mean that the adviser on
international law to victorious governments would be
forced to advise his government as a first measure in
the territory of the enemy to dissolve the government so
that the occupying power is no more bound to observe the
rules of international law. Indeed, it would mean to ad-
vise his government, if possible, to attempt to eliminate
all members of the government so that the civil government
is left over and the occupying power is free without
considering international law can take any further pro-
ceedings, i.e. "blood rule".

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I believe, I have thus proven that the Hague Convention of Land Warfare and/or the International Law of Customs must be adjusted to its original Germany. This conclusion, however, gives me the right to consider as parallel cases the events of the last three years in Germany in order to ascertain how the HLC (Hague Convention of Land Warfare) is to be applied and/or what the victor state may do or may not do in occupied territory. International law can be found only if the conduct of all victor states in occupied territory is analysed and not Germany's conduct alone. One cannot find international law if one regards Germany's conduct apart in a legal vacuum without considering at the same time how the other states of the world applied or interpreted the provisions of international law at that time, previously or subsequently. International law appears to be an international law that is effective among all nations and that therefore can only be understood if all nations are considered and not only one nation.

Neither the action of a particular nation falls by coincidence in the same period or not is of no significance to the legal interpretation. I point out in this connection to the fact that the prosecution in the Nuremberg trials often quoted parallel cases for its legal argumentation in international law which did not fall in the same period either but took place at much earlier periods. It is however insignificant from a legal point of view whether the parallel cases date from an earlier or later period. It is only a coincidence when the parallel cases originate in a later period for the simple reason that at the time Germany had occupied foreign territories,

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the Allies for their part did not yet occupied any German territory, moreover, the prosecution forgets that already during the war, in other words while hostilities were still in progress, the Allies both in the west and the East had already carried out the occupation of Germany, this during a period which was wide the basis of the indictment and which lasts until 8 May 1945.

The Prosecution in all Nuremberg trials has repeatedly raised objections by using this deadline of 8 May 1945 for the very obvious reason that it is embarrassing for it to see the conduct of its own government placed under legal scrutiny.

The procedure before the International Military Tribunal already shows that not only Germany's conduct, but also that of the allied countries calls for an examination. The Tribunal then clearly indicated that also the conduct of the Allies is of significance, that is, entirely and explicitly independent of the fact whether the actions of the Allies took place at an earlier or later time than those of Germany. I wish to point out two cases:

1) with regard to the charges by the prosecution as to submarine warfare, Dr. Krausshammer in his efforts to analyse the provisions of international law referred to the parallel case which concerns the conduct of the United States in the American submarine war against Japan, at the time the prosecution objected because the submarine war against Japan took place in a subsequent period and had no connection with the crime with which the IMT dealt. The Court did not sustain the objection, requested Admiral Nimitz' statement and then found in its judgment that no verdict of guilty could be rendered because of this very parallel case.

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b) with regard to the prosecution's charge concerning the occupation of Norway, I referred during the proceedings before the DAI to the conduct of the British government and the British Admiralty, also a legal parallel, and in addition to that also to the conduct of the British and French governments and the British and French Military authorities with regard to the allied plan pertaining to Belgium and Holland as well as the plan to destroy the Caucasian oil wells. The prosecution objected on the grounds that these notions did not form the subject of the proceedings. However, despite these objections by the prosecution the Tribunal admitted most of the documents which I introduced at the time which placed me in a position to discuss the conduct of the allies in my Final Plea.

Accordingly, in this trial events in occupied Germany must be taken into consideration if we want to analyse the situation with regard to international law. The documents which I introduced and the arguments which I presented, clearly show how inconclusive and uncertain the basis Count II of the indictment has in international law. They not only show contrasting opinions among the German, Soviet and Allied Governments, but moreover - and this was particularly important to me - they demonstrate the divergency of views among the military governments of the western allies. Scrutiny of the various documents shows that also the various offices of the military governments have changed their views within the last three years. At times one has tried to work along the HIO (Hague Convention concerning Land Warfare) at other times one has intentionally or unintentionally ignored the provisions of the HIO. If so ever there does not exist a uniform legal approach

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In his professional activity within the I.C. I.R.B.,
— confined himself to the dyestuffs field — and in this
field, which always had strong international relations, he
was definitely a pioneer. His professional
successes, therefore, mainly lay in the field of inter-
national relations, and thus as early as the twenties, at
the time when Germany was lagging politically far behind
the other European countries, he became almost alone in
confronting Germany in international exhibitions,
which fact has been clearly in the testimony of Mr.
— who has put, in the official order of the European
Exposition which in the course of the years developed
from the I.C. I.R.B., the French and the German dyestuff
industry as the two (German Chemical Industries) — the which
has been joined by the British dyestuff industry. Already
in 1926, the I.C. I.R.B. was under the German flag at the
World's Fair in London. It became a member of the Inter-
national Chamber of Commerce, and since then year
after year the relations with the foreign industry in Europe,
and other countries to the States in order to
establish friendly relations with the American
dyestuff industry. — has been and will be a member and
— and, and as the witness Mr. — has said in this room:

— has been a pioneer in international cooperation
in the true sense of the word, and guided by his
whole life time, his professional knowledge, and con-
ciliatory manner to conduct international relations.

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3. Further words read did to prove that this can
 have any inner political significance with the
 political and that it is a representation of political ideas
 and of useful economic relations with foreign countries,
 especially since the staff business, which is conducted,
 should be a representation of the business.

In an interview on 1-30-1939 with 202 IT213, in line with
 his economic views that stand in favor of the German-
 English trade relations and particularly in the
 relations to Germany in March 1939. He was a
 member on the staff for German-English industrial
 relations, the British German industrialists like
 were surprised by the sudden occupation of Germany
 by Germany. He said that the point was that the
 political situation could result from this reason of
 the result of Germany, as he to his own optimism and
 the person I talked with only saw the economic neces-
 sities and did not think that war would be the outcome.
 He said that he must, however, this optimistic view has
 innumerable people to see and heard, and concerned
 the German people to see to the fact that the
 would be by war to the extent until the outbreak of the
 war. The outbreak of war was for him as for other people
 was favored by useful economic co-operation in in-
 creasing the industrial output, and that he said on 1
 January 1939 to the staff of the UGLA:

which life's work is now possible. How can we
 reconstruct the world which is the kind of life?

(page 79 of original)

He sees the cartel agreements which he achieved and the international business of I.G. Farben collapsing, and knows that in the long run a war of this sort will mean the end of the cultural contact with foreign countries, so necessary to him. Now there comes a period during which a man of his type must perforce suffer, because all enthusiasm for war and all militarism is foreign to his nature. All contact with the old cartel-countries is severed, with the exception of Switzerland, with which he continues to remain in contact. During the course of the war, SCHITTLER endeavors, after economic connections with Poland and France have again become possible, to do everything to preserve the I.G. Farbenindustrie and thereby to create the possibility of a common economic foundation for the subsequent period of peace. Seen from this point of view, it is understandable and justified that, in accordance with the former relations, he takes an interest in the Polish dyestuff industry on the basis of the cartel agreements, and via the Swiss dyestuff industry offers his former French friends a renewed possibility of working together, even during the war, and/or according to the same wishes of these French friends.

But all these endeavors were to prove in vain. This had been clear to SCHITTLER for some time, but he had not believed that the justified hate of the victors against

ITLER and National Socialism would also be directed against every German and especially against German industry. Thus it happened that he was mentally completely unprepared when, soon after the unconditional surrender, in May of 1945, he was arrested and in the penitentiary at Preungesheim had to enter upon a martyrdom for which he was unfit, both physically and mentally. The brutal treatment in the penitentiary and at the same time the

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endlessly long interrogations which skillfully alternated the methods of stress with those of friendly treatment, led to mental depression, and in accordance with his nature, to a compliant disposition, so that it is no more to be wondered at that in the earliest statements, which amounted to hundreds of pages, he confessed truth and falsehood and let himself be guided to false conclusions. Everything he had accomplished, everything he had formerly thought and done was regarded sceptically by the interrogators and twisted to the opposite; the motives of a friend were attributed to him although exactly the opposite is true of him; brutal, violent, energetic, relentless and without culture.

After almost two years' imprisonment, he finally came to the Muerberg prison and was then examined by the prosecution. Here, too, the stress was resumed in January 1947 by threatening him with a trial for perjury if he refuted his former statements, which were submitted to him; he was kept apart from his colleagues in prison; he did not know how to help himself and was only happy when he was treated in a friendly fashion, which always happened whenever he complied with the wishes of the prosecution in accordance with his old statements and - as Dr. SCOTT expressed himself - "cooperated". Thus it came about that he actually did cooperate and so this one again filled hundreds of pages with affidavits. And thus I became acquainted with SCOTT after the indictment had been served and had to see that in comparison with the descriptions of his former co-workers, he was only a shadow of his former self; his nature, fundamentally unstable and compliant, had finally achieved the upper hand and injured his ability to judge clearly. Therefore I stress with all frankness the fact that - soon had to

(1 - 2 of 1 in 1)

In 1962, I was recruited by a CIA officer who reached me at my home from my first job, as a student in the U.S. Army, with a letter:

Q1 practices in order to help him, the two were inter-
viewed and a letter, in which a copy of the
letter (SACIT/100, and it 164).

of v. I. I. I., Minister from the period
Before 2-3-18:

[illegible][illegible]

Final Plea vs. C. T. LOR

(... of origin 1)

all it was dedicated, ... ven his ... the
... were ... this id ...

Therefore I am firmly convinced that ... ven
... LOR was ... guilty and ask the tribunal:

to acquit

Mr. ... LOR.

...
...
...

FINAL FILE v. SCHULTZ

CERTIFICATE OF TRANSLATION

2 June 1948

we, Fern W. Rinder, Elizabeth A. Johnson, Thyr Thysen, Ludwig Meymann, and Leslie H. Linton hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of the FINAL FILE v. SCHULTZ.

Fern W. Rinder	Elizabeth A. Johnson	Thyr Thysen	Ludwig Meymann
24091	2-387941	00698	39096

Leslie H. Linton
2-387996

Film Plot, WHESTER (BMA115)

Case 6
Defense

TRANSLATION OF FINAL PLEA WURSTER
OFFICE OF CHIEF OF COUNSEL FOR WAR CRIMES

Tribunal VI

Case VI

FINAL PLEA

for Dr. Carl Wurster

Presented by:

Friedrich Wilhelm Wagner

Attorney at Law.

Wagner



When I returned about 15 months ago in my old country after an exile of 14 years I never would have thought to make in June 1948 a Final Plea before an American Military Tribunal for a man accused to be a war criminal. When inspite of all I am doing so the only reason for it is my innermost conviction to serve a just cause.

Now it is your task, Your honors, to pass judgement in this matter i.e. on the man whose defense counsel to be I have the honor.

Of all tasks imposed on human beings, that of the judge, in my opinion, is one of the most difficult and most responsible. But it is also one of the most supreme tasks. Who lifts himself above his fellow-citizens more than he who passes judgment on them? Who has to decide about the fates of men, about happiness and distress of others more than he? Whose word is more powerful than his when he, as a criminal judge, pronounces his guilty or innocent? Honor and freedom, in most countries even the life, depend on the verdict of the judge. So wonder that the freedom-loving and progressive countries regarded it as one of their most important legislative tasks to obtain guarantees that this power is executed within the law and with the high aim of realization of justice for all. It depends indeed on the fact that such guarantees exist in a state and it depends on their nature whether one may characterize this state as free and progressive. No other country in its history has put up a greater struggle for the achievement of these guarantees and for their solid foundation than the United States of America. The names of a good many of her great men are closely connected with the struggle for these legal guarantees. Many great and independent jurists who, in pointing the way, combined with their judiciary power the great gift of realization of justice based on wisdom, experience in life and legal ability, have grown up in this atmosphere.

I put the question up to myself whether all Germans, who have followed these long and sometimes difficult and tiresome proceedings in this court-room, did not share my feelings namely,

whether they too felt the breath of the free judiciary which thrones above the parties in majestic calm and objectively endeavours to find the truth, in order to derive from this truth the guilt or innocence of the defendants.

The way to truth is not always easy to find and often it is steep and rocky. How difficult must it be in a case like the present, in which foreign judges are to judge about matters, conditions and persons who in many respects greatly differ from those in their own country. You, Your Honors, have been led, in the course of a period exceeding the past 9 months, over roads leading into deep underwood which is formed by interests, over-zealousness, misunderstanding and mistake, so that once we heard from the judge's bench that they were being taken too far into the underwood, eventually, though not quite easily, the way out of the underwood was found and, with the help of the Defense, one succeeded in reaching the road which leads to the truth.

Now what does this truth look like? What does it look like in the relatively small part of the case in which Dr. Gurater's Defense was permitted to assist in establishing the truth?

Following I give the answer in a negative way: It looks entirely different as it was described by the Prosecution in the Indictment as well as in its Trial Brief of 13 December 1947. Expressed in a positive way: It is in complete concord with the facts expressed in my Opening Statement of 19 December 1947 before this High Tribunal.

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Everything therein claimed by me to constitute facts proved to be correct and everything for which I promised to produce evidence has been proven. We have produced the evidence through witnesses whose affidavits were so trustworthy and certain that none of them had been examined by the Prosecution for cross-examination. Among other things we have established the proof through a single witness who before this High Tribunal has given his efficient and irrefutable testimony. We have established the proof through documents and contemporary

records, the authenticity of which has not been doubted, and finally, through Dr. Jurstor's testimony in his own defense. The impression left by this examination has certainly given the assurance to all those who were present that, in the person of Dr. Jurstor, a man has testified who, with the best of his knowledge and belief, has described the circumstances as they actually were.

In 1938 Scientist Professor Dr. Carl Bosch, the great Bosch, has called Dr. Jurstor into the Vorstand of the IG Farben, as it is expressed in our Exhibit 23 by the former member of the Vorstand Dr. Seidel: "As one of the perpetuators of his spiritual heritage" because of his "scientific, technical and human qualities". At the same time Dr. Jurstor became a member of the Technical Committee and business manager of the large and well reputed plant in Ludwigshafen/Rhein-Opau. Permit me, Your Honors, to refrain from going into particulars, especially from mentioning those which have already been appraised in our Closing Letter. Permit me, in brief, to mention Dr. Jurstor's responsibilities in so far as they are important for the question of his guilt or innocence.

Dr. Wurster assumed the previously mentioned positions in the great Konzern I.G. Farben at the age of 37 without having had any inside information, as it is stated in Dr. Seidel's affidavit, into the "over all situation prevailing in the Ludwigshafen plant, and much less into the over all situation of the I.G." In his affidavit, under Exhibit 30, Document Book I, Dr. Wurster himself describes as to how he faced the new environment, the way he adjusted himself to it and what his attitude was towards this new world. Permit me in this connection to recommend this very description once again to the special attention of the High Tribunal. The decisive point in this connection is the fact that, on the basis of a practice which existed long before Dr. Wurster's entry into the Vorstand and the Technical Committee, every member of this body had to represent and was responsible for his personal fields of work. One based this on the assumption, which was justified on the basis of the experiences made, that every member in his position is carrying out his duties and tasks in an orderly manner and to the best of his knowledge and belief. In other words a partition of work and therewith a partition of responsibilities was necessarily taking shape in these bodies. Necessarily, because the plants of the IG Konzern were widely spread over various regions of Germany and because of the fact that members of the Vorstand, like Dr. Wurster, who was in charge of a plant employing 35 to 40,000 people at times, could not have worked in any other way but through partition of work and responsibility in the Vorstand and Technical Committee.

A reference to the German corporation law is entirely devoid in this connection. Without mentioning any other points of view,

we are here dealing with a phenomenon which we frequently encounter in the fields of economy and law. The law, in most cases, only codifies those phenomena which have already become a practice in the economic life, therefore it usually lags behind the reality. The economy, however, especially in our time of immensely revolutionized technical progress, continues to develop constantly and often by leaps, and cracks the embankments which had become too narrow for the wide stream of the economic developments, and makes room for its own bed. Thus the German corporation law was no longer sufficient for the large Konzerns and, due to the lack of a law replacing same, a practice had taken shape which remained the sole means for the administration of the Konzerns. This practice has also created a new law, which would have certainly been codified again into the form of a law at some future date, and therewith would have given a new example as to how the law subsequently sanctions that which had already been a recognized custom long before. The remarkable words in the judgement of Military Tribunal No. 4, dated 22 December 1947, page 10 646, are clearly in keeping with this phenomenon, and I quote:

"These developments make plain the necessity of appraising the conduct of defendants with relation to the circumstances and conditions of their environment. Guilt, or the extent thereof, may not be determined theoretically or abstractly. Reasonable and practical standards must be considered."

If such reasonable and practical standards are considered, one can only arrive at but one conclusion: Dr. Warster is responsible only for his personal field of work.

The Prosecution itself, with respect to its theory of collective responsibility of the Vorstand for every development in this large concern, has dealt the heaviest blow to this theory namely, that it indicted only part of the Vorstand members and omitted those who, from the theoretical point, could have been involved in the preparation for a war of aggression much more easily, as they were already in the Vorstand at the time of the alleged treaty with Hitler and that it included others in the Indictment, like Dr. Wurster, who only became members of the Vorstand shortly before the war.

The further theory of the Prosecution of joint planning and conspiracy is also unfounded and one of the reasons for this is the arbitrary selection of the Vorstand members who have been put on trial. If one could have talked of such a conspiracy then it would have necessarily been again the older members not put on trial who could have taken part in such a conspiracy and not the younger ones like Dr. Wurster who became members of the Vorstand at a time long after the plans for this alleged conspiracy had been forged. If this fact already proves the impossibility of the Prosecution's construction with regard to this point, for the Prosecution if it wants to characterize Dr. Wurster as a participant in this plan, it should have been necessary at least to furnish proof that he either knew thereof prior to his entry into the Vorstand or was informed after his entry and that, through his express agreement or his conduct following his knowledge of the conspiracy, he had demonstrated his intention to participate in the joint plan.

The Prosecution not even attempted to offer such evidence much less produced it. The responsibility which is due to my client, namely for his personal field of work, he has accepted without hesitation.

In our Closing Brief we have stated to Count I of the Indictment the external and objective facts as they have become manifest from our evidence. I do not wish to repeat the Evidence or to add anything. However, as regards the subjective facts, I should like to stress supplementarily a few proven facts, which must convince any just thinking person of the incompatibility of the very personality of Dr. Furster with the charges raised against him by the Indictment.

Of the majority of men, perhaps of all, the sentence of Horard Ferdinand Meyer, the great Swiss poet, may be true:

" I'm not a book constructed artfully
But man, complex and contradictory."

But a man of the high degree of cultural standing like my client represents an in himself complete, well-rounded personality with definite fundamental views on world and life and the relations among men. These basic views in the long run determine his actions. In small matters he may deviate once, however, on larger issues he is dictated by his conduct. These basic views of Furster are Christian-Humanitarian, accordingly with all the stress on the natural-national, turned towards the supernatural, the bringing together of humanity and the securing of peace. They consequently are related to National-Socialism as fire is to water.

Whoever pursued Nazism out of inner conviction and with a knowledge of its principles and goals, will thoroughly agree with a war of aggression or the plundering of foreign lands or the enslaving of men, if it is initiated by it (Nazism) or his country and will attempt to further it with all of his powers. But he, like Dr. Wurster, is motivated by principles such as I have derived from the Evidence presented and a study of the man himself and have just described, for such a man a war of aggression, as well as plundering, or human slavery, is something to be despised. He will try, at the very least, to disengage ^{himself} from these things, so far as he can, and under no circumstances will he participate personally or be prepared to support them as the deed of others.

To what extent have I proven these basic principles of Dr. Wurster? I shall only quote a few proofs to you. In 1940, that means in the time when the Nazi system was in full bloom, Dr. Wurster said, among other things, the following at the public funeral services for Professor Dr. Carl Bosch - and I quote from our Exhibit in Book 1:

"We should continue on along the way he (Bosch) has shown us, never tiring, being truth seeking fighters for the recognition of the laws of nature, fighters for the control of nature through science and thereby fighters for beloved Germany and for the progress of all humanity."

These were Bosch's ideas, as they were and are those of Wurster. To speak of the "progress of all of humanity" and even to demand fight for that cause, that, indeed is, what I had to prove to be the basis of Wurster's belief.

That is the direct opposite and complete denial of the entire narrow and reactionary Nazi ideology.

His rejection of military enterprises during the Nazi period is clearly proven by a series of our affidavits. I will only pick out our Exhibit No. 256. A man who collaborates in the preparation for a war of aggression will surely have a different reaction than the one Dr. Wurster had on 3 Sept. 1939, which he expressed to an old colleague from I.G., Dr. Mohner. This man says "Dr. Wurster was deeply depressed by the outbreak of war." Dr. Wurster expressed himself further to him as follows:

"You shall see, this (the war) is the end of our beautiful plant and our country."

This conversation with his confident took place while Dr. Wurster was in a state of deep depression and ended in a way so characteristic of the man:

"There is nothing left for us small individuals than to carry on where fate has placed us and to try to do our best to preserve the plant that has been entrusted to us and for the people who work there."

Are these the words of a man who plans, prepares and leads wars of aggression? Are they not rather words, spoken even before 1939, the first of which, the ones about the end of our war threatened country, would have dragged him before Hitler's People's Court and somewhere else, had they become known?

And such a man has already spent more than a year in prison, among other things, because he is supposed to have planned Hitler's wars of aggression. I would really be stealing your time and insulting your experience and judgment if I said even one more word to prove that Dr. Wurster should be acquitted on Count I.

The other Counts of the indictment, II as well as III, will be vitally affected by this decision.

Whoever would plan, prepare and lead wars of aggression, wants to subjugate foreign peoples and countries, the foreign countries, in order to steal territory or riches, i.e. in the words of the indictment: plundering and exploitation; the foreign peoples, to have them work for you and to exploit them. But whoever repudiates wars of aggression, also repudiates their purpose, namely robbing, plundering and enslaving foreign workers.

In regard to Count II the Prosecution has also not offered any evidence for any act of Dr. Wurster's that would have led to repudiation or the plundering of foreign countries. The two incidents which have been forcibly dragged in by the hairs, so to speak, in order to make Dr. Wurster eligible for Count II, only give me cause to make two remarks, besides our written argument. The man, at whose request, and as whose purely technical assistant and companion, Dr. Wurster made a quick trip through a small part of Poland, occupies an honorable official position as the result of an American-British appointment. I have nothing against this, I consider it right. But what is sauce for the goose is sauce for the gander.

One can not honor the one who, if there were a question of guilt in the first place, would be the most guilty one, and destroy the other, who was only a minor character. And the other man, Dr. Ludwigs, who had actually carried out the negotiations concerning the Diederhofener Oxygen plant in his position as a partner and who appears in the Prosecution Documents as such, he also an honored official as a result of an American appointment. I don't object to this, but then one can't accuse Dr. Turster, who according to Dr. Decker's testimony in our Exhibit 85, Subsections 3 and 6, did not participate in the negotiations and was not a partner. The fact that in both cases of which Dr. Turster has been accused in connection with Count II, the two men who were the principle figures have not been brought to trial, is proof that there is no indictable offence present. Otherwise, would it be compatible with the principle of equality before the law, could it be reconciled with a healthy sense of justice, to let the principle figure go free and to punish him for the same alleged act for which you imprison and dishonor secondary figure?

We have proven Dr. Turster's real attitude towards spoliation and robbery in our Exhibit No. 85 under Subsection 6. Dr. Turster was urged by the Gauleiter and Chief of Civilian Administration for Lorraine at that time to persuade the I.G. to acquire the Dieuze Plant of the Etablissements Kuhlmann S.A. Paris and to make a so-called "model factory" of it. This was the only time that my client was personally concerned with the question of acquiring enterprises in the occupied territories.

and what did he do? He turned down this project of the Chief of the Civilian Administration so firmly that it was never carried out.

and this is the man who is accused of spoliation and plundering. What remains of the charges to Count 2 of the Prosecution? Nothing - nothing except acquittal, which I request you, your Honors, to grant on this count also.

No statement could be further removed from my clients nature, could miss the mark further, be more unjust and, above all, injure or insult his innermost being, than to say that he has committed crimes against humanity. He, whose whole life work was accomplished according to Goethe's line

"Men should be noble,

helpful and good",

could only be accused of crimes against humanity because they did not know him and did not hear him before the charges were made. He was a number 19 or a number X on the list of defendants. Before the indictment was filed he was not a man of flesh and blood for these people. Above all, not a man with a heart. I would like to believe that in the course of this trial the Prosecution has itself become convinced of the worth of the personality of Dr. Turster and in the end, belongs to the man of whom the German poet Friedrich Schuckert says:

"Those men are wise forsooth

who travel through error to truth."

Like other factories in the same region the Ludwigshafen plant always employed foreign workers. During the war a fairly large number of foreigners were assigned to it who had come entirely of their own accord. That is no crime.

The Prosecution represents the case as if all the foreign workers who were employed in the Ludwigshafen plant during the war were involuntary workers. That is the great and fundamental error upon which this Count of the Indictment is based, insofar as the Ludwigshafen plant and its Plant Manager, Dr. Kruger, are concerned. By far the great majority of the foreign workers who were employed in the Ludwigshafen plant were, in fact, voluntary workers. Among the material which we offered in evidence we produced documentary proof that foreign workers from the most widely different nations, whether Belgium, France, Slovakia or any other country, applied for work in the Ludwigshafen/Rhine plant. Nor is that surprising in view of the reputation which the Ludwigshafen plant enjoyed far beyond the borders of Germany for its generous social welfare program. Nobody can close his eyes to these facts if it is a question of viewing and appraising the circumstances of the case objectively.

The Prosecution has not produced the slightest proof that the Ludwigshafen plant employed involuntary workers to any extent worthy of mention.

To be sure, at a comparatively late date in the war

the authorities forced a small percentage of foreign workers on the Ludwigshafen plant who did not come voluntarily.

These few workers were forced workers in a double sense.

The Nazi authorities forced them to come to Germany to work and these same authorities compelled the Plant Manager, Dr. Urster, to accept them.

It was an irresistible compulsion for the workers concerned as well as for the Plant Manager, Dr. Urster. Just as little as those foreign workers can be charged with the crime of collaborating with the enemy because of their work in Germany, just as little can Dr. Urster, who had to accept them, be charged with the crime of employing forced workers. Both of them, forced workers and the Plant Manager Dr. Urster, were victims, to be sure with differences of degree, of the same system, namely the Nazi system.

Dr. Urster said the following before you during his direct examination by me - I quote:

"The idea that anybody should do involuntary work seems to me now, and also seemed to me then, something which is contrary to my entire philosophy of life."

(p. 11 124).

However, under the tyranny of Hitler's fascism he could not change anything. But as he said in another part of his

examination by me before the Tribunal (p. 11 148), I quote:

" In the last analysis there were situations under this dictatorship where any resistance was completely senseless."

But he keeps on, and there you see that he did not make it so easy for himself in examining the questions as to whether resistance was senseless. - I quote:

"And there were other situations where one had to sacrifice oneself entirely, especially when it was a question of the welfare of others, and I tried to act in this way",

and then he concludes in his modest manner:

"I did not always succeed."

In the case of the employment of involuntary foreign workers any resistance under the tyranny would have been completely senseless and therefore impossible. The sacrifice would have been in vain.

All circumstances, therefore, speak in favor of the existence of a state of necessity with reference to the employment of involuntary foreign workers.

Your Honors, if you consider the depositions and documents with all their appendices which we submitted in our volumes III, IV, IVA and V, a single, splendid picture of great and noble humanity will be revealed to you. The care and devotion with which Dr. Arster fulfilled this very task could only have been shown by a man of his character. Just like the German factory employees, all these workers were for him primarily human beings toward whom he acted as a human being and for whom he

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looked out to the full extent of his ability, often against the prescriptions of the Nazi laws. By his tireless and unending efforts in behalf of the foreign workers entrusted to him Dr. Arster erected a monument to himself in their hearts. If you will glance over the letters and testimonials of these foreign workers which we have submitted you will find the proof of this. What more can you ask than that such foreign workers should express the desire to return to the Ludwigshafen plant again? What more can you ask than that such foreign workers should say that they were very happy? What more can you ask than that these men and women should declare that they were treated like their other German fellow workers? And is a man like this, who did everything with this noble and loving care to make up to these people for the loss of their native land, is a man like this to be called a criminal against humanity? If he were one, then words would have lost their meaning. If he were one, who then, may I ask, would not be one? To speak in Dr. Arster's own words during his direct examination before your Tribunal, "what a wave of hatred" would have been hurled against him by the foreign workers after the Allied occupation if the allegations of the Prosecution were correct on this point! Instead of this wave of hatred, all these testimonials of gratitude and appreciation on the part of the foreign workers, instead of this wave of hatred the

esteem and sympathy of the American occupation authorities, as is shown by the depositions of Colonel Rhoads and Captain Marshall, instead of this wave of hatred we even have the appreciation of the French occupation authorities, who reposed complete confidence in Dr. Wurster up to the time of his arrest a year ago by the Prosecution by leaving him in charge of the plant.

All who, are intimately acquainted with Dr. Wurster's actions know, just as the foreign workers themselves know and testify, that he has deserved well of them. That he could lay claim to, if he were not the modest man that he is, would be gratitude for the great humane assistance and solicitude which he granted to both the happy and to the unhappy.

No other forced workers were employed in the Ludwigshafen plant. We have proved that in two cases the Nazi authorities made a definitive attempt to transfer concentration camp inmates to the Ludwigshafen plant in 1944 and that in both cases Dr. Wurster succeeded by extraordinarily difficult and dangerous negotiations in avoiding this. Wherever Dr. Wurster himself had to make decisions he tried everything to the utmost limit of his ability to guarantee the freedom of labor and to honor the concept of humanity.

Only look at our documents on the treatment of the Jewish factory employees mostly chemists and engineers, who were employed in the Ludwigshafen plant. There, too, you will hear of

material and moral assistance which he granted to all of these persecuted and harassed people, of assistance which at that time was unique in its nature and extent.

Under these circumstances I probably hardly need to advance any further arguments on the series of questions which have been discussed in this courtroom under the name of "Degesch".

Your Honors, I have previously quoted a sentence which my client spoke here before you. "There were situations where one had to sacrifice oneself entirely, especially when it was a question of the welfare of others. I tried to act in this way." In March 1945 a few weeks before the collapse of the Nazi Reich when that order of the Nazi government was transmitted to Dr. Wurster, to blow up his factory and come to Berlin, the hour of his greatest trial had arrived. Should he carry out the order and thereby guarantee his personal safety? Or should he assume what was still at that time the extraordinarily great risk of sabotaging the order and, if circumstances should warrant of gambling away his life? He rejected the easy way, risked his life, sabotaged the order and saved men and plant from a sad and horrible destruction. He had met the great test.

For all these reasons the 20,000 workers and employees of the Badische Anilin- & Soda-Fabrik in Ludwigshafen feel themselves bound to Dr. Wurster by close and solid ties, so closely and solidly that when it was announced in August of last year that he was to be taken away to Nurnberg

they spontaneously went out on a sympathy strike, as is shown by our Exhibit 249 and our Exhibit 48.

So in the hour of the collapse he could appear before his workers and employees, whether Germans or foreigners, so he could appear before his own people and before the victorious Allies who were occupying the city and factory, just as he appears before you, Your honors; with that eminently modest bearing which can best be expressed in the words of the imprisoned Florestan in Beethoven's "Fidelio":

"Sweet consolation in my heart,
my duty I have done."

Just as that Florestan, arbitrarily locked up by his enemy, was freed by the King's minister, so I and innumerable others with no hope that this conscientious man will be freed by your verdict, the verdict of independent judges of the free and mighty United States of America.

Justice will demand this acquittal for my client. But at the same time it will be a contribution as necessary to the moral reconstruction since it will restore to many that without which men cannot live together in peaceful communities; the faith in justice.

CERTIFICATE OF TRANSLATION

28 May 1948

We, Fred Salomon, Adolph Lusthaus and John B. Robinson
hereby certify that we are duly appointed translators for
the German and English languages and that the above is a
true and correct translation of the Final Plea Murster.

Fred Salomon
A-446622

Adolph Lusthaus
B 398010

John B. Robinson
X-046350

MICROCOPY

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